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CURRENT TOPICS

The Law's Losses

DURING 1956 the law suffered many grievous losses. Among them were Lord Porter, Sir Travers Humphreys, Sir Valentine Holmes, His Honour Judge Tudor Rees, Sir Charles Doughty, His Honour Judge Hildyard, His Honour Judge Richardson and His Honour Judge Konstam. Shortly before the end of the old year there came the sad news of the death of LORD ROCHE at the age of eighty-five. His was a full and successful life. A silk at forty-one and a High Court judge five years later, he remained a puisne judge for seventeen years, during which he showed himself in the highest degree able, just and merciful. He went to the Court of Appeal in 1934, and in 1935, as Baron Roche of Chadlington, he went to the House of Lords, where he sat as a Lord of Appeal in Ordinary until 1938, when he retired. On 6th January, 1957, Lord Justice SINGLETON died at the age of seventy-one. His, too, had been a life of achievement. Although his career was broken by the first world war, during which he became a captain in the R.F.A. and was mentioned in dispatches, he took silk at the early age of thirty-seven and became a High Court judge at the age of forty-nine. In 1948 he was promoted to the Court of Appeal. He was Recorder of Preston from 1928 to 1934 and Judge of Appeal for the Isle of Man from 1928 to 1933. Solicitors will recall with gratitude his sympathetic treatment of their difficulties in his well-known lectures on "Conduct at the Bar," published in 1933.

The Court of Appeal

THE retirement of Lord Justice BIRKETT from the Court of Appeal, which was recently announced, does not, we hope, remove from public life a truly great man, whose gifts obtained him the highest prizes at the Bar, whose ability as a lawyer made him outstanding on the Bench, and whose qualities as a man make him beloved of all who know him. On 8th January it was announced that Mr. Justice SELLERS would take his place. Sir Frederic Aked Sellers has been a judge of the High Court since 1946. Like so many other judges the new lord justice practised on the Northern Circuit. From 1936 to 1946 he was Recorder of Bolton. The appointment will be approved both on account of Sir Frederic's personal popularity and on account of the soundness of his judgment. Mr. GEORGE RAYMOND HINCHCLIFFE, Q.C., has been appointed a judge of the High Court and is to be assigned to the Queen's Bench Division.

Personal Liberty

LAST week we stressed the vital duty of the law and lawyers to protect the liberty of the individual. Just before Christmas in *Huntley* v. *Thornton and Others* (*The Times*, 21st December), HARMAN, J., awarded a fitter £500 damages for conspiracy against the secretary and ten members of a district committee of the Amalgamated Engineering Union. With the power of the trade unions growing, the courts have rightly been concerned to see that this power is not abused and this case is one only of a series of cases where freedom to work has been in issue. It is interesting to see that Harman, J., compared the closed shop in industry with the restriction of the right of audience in the Supreme Court to members of the Bar, and said that it was not for English lawyers to dislike or distrust the closed shop for they were all members of a society which itself lived and thrived on this principle. Whatever may be the analogy with the Bar, solicitors draw a strict and proper distinction between qualifications and professional conduct on the one hand and membership of The Law Society on the other. Some trade unions deal with questions of skill and qualifications, while others deal only with the ordinary protection of their members. The only justification for any "closed shop" is that the public interest requires the possession of certain skill and the upholding of certain standards. Men and women who possess the required skill and standards should be able to earn their livings whether or not they choose to belong to any particular organisation for other purposes.

Let Us Pay Our Dues

THERE are a few practising solicitors who are still not members of The Law Society and who justify their abstention on the ground that the Society does nothing for them. They are fully entitled to their opinions and we would oppose any move towards compulsory membership as envisaged by s. 3 of the Solicitors Act, 1941. However, we are now in the season of paying annual subscriptions and we suggest that non-members of the Society should reconsider their position in view of the substantial benefits which the Council of The Law Society have obtained for the profession in connection with retirement, not only in securing by long persuasion the passage of legislation, but also in negotiating and devising the scheme which was announced just before Christmas. It would have been understandable if this scheme had been limited to members of the Society, but we believe that it will be open to all. This is only one of the services which our professional organisation has rendered: the Society's strength depends largely on its numbers and those who do not join must weaken it to some extent.

More Chaotic Valuation

AS *The Times* has observed with unusual acidity, if and when the new Rating and Valuation Bill passes into law and comes into operation, there will be no hereditaments which are assessed for rating purposes at their true values. The Bill proposes to reduce the rateable value of shops and offices in the current valuation lists by one-fifth and all properties used partly as private dwelling-houses and partly as shops or offices by one-seventh. Private dwelling-houses are already assessed at their 1939 values and are not affected by the new Bill. It is true that the new assessments are inequitable and impose a disproportionate burden on the occupiers of shops and offices because dwelling-houses are assessed at 1939 values. It does, however, seem to us odd that the matter should be adjusted by retreating from 1956 values instead of advancing towards them: the logical course would have been to increase other assessments by 25 per cent. but the Government have probably decided that petrol rationing and the Rent Bill are enough to bear. In fact the practical effect will be much the same and will be received more peacefully.

The Rent Bill

IN introducing the Rating and Valuation Bill the Government have yielded to the argument that injustice was being done between different classes of ratepayers. It will be interesting to see whether Mr. SANDYS will persist with his plan to decontrol houses with rateable values exceeding £40 in the Metropolitan Police District and in the City of London and exceeding £30 elsewhere in England and Wales. This is the only provision of the Rent Bill which has aroused widespread concern: no one can seriously dispute the justice of raising rents. It is true that if the plan proceeds many undeserving landlords will receive unmerited capital gains: where control continues many undeserving tenants who have been subsidised for years by their landlords will be able to contemplate their landlords' discomfiture from the protection of their tenancies albeit while they pay increased rents. If a change is made in the Bill we suggest that it be by way of differentiating between different parts of the country. At present only London is treated separately: there is a strong argument for treating Birmingham and other overcrowded areas similarly, but if the Government decide to raise the limits of rateable value, they would be wise to write into the Act the dates when future decontrol will take effect.

Master Bites Servant

THE House of Lords decided on 20th December (*Lister* v. *Romford Ice and Cold Storage Co., Ltd.*, *The Times*, 21st December) that a lorry driver is liable to his employer for damages and costs recovered by a fellow employee in respect of injuries caused by negligence of the lorry driver. Such a situation could not have arisen in this particular form before the abolition of the doctrine of common employment in 1948, and we shall deal with the implications of the decision when we have the full report. The case is remarkable for the dissenting judgments of Lord RADCLIFFE and Lord SOMERVELL OF HARROW in the House of Lords, and of DENNING, L.J., in the Court of Appeal, who sought to develop the common law and to bring it into line with what they conceived to be the realities of modern life by implying into a contract of service with a lorry driver a condition that the employer would cover by insurance not only himself but also the lorry driver. It is tempting to suggest that the matter should be dealt with by legislation, but it would certainly be dangerous to enact that no servant should be liable to his employer for his negligence, and anomalous to give such protection only where insurance is compulsory as under the Road Traffic Acts. It would probably be preferable to leave the law as it is and to rely on trade unions negotiating suitable agreements with employers. At the worst the trade unions themselves can cover their members by insurance.

Occupiers' Liability Bill

In the closing stages of the last Session of Parliament the Occupiers' Liability Bill had a preliminary run through the House of Lords. It has now been reintroduced and it is presumably intended that it shall become law fairly soon. We summarised the Bill when it was originally introduced and it will therefore be enough at this stage to remind ourselves that it will impose on occupiers "a common duty of care" which it defines as a duty "to take such care, as in all the circumstances of the case is reasonable, to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there." It deals specially with the liability to children and to workmen. The landlord who is responsible to his tenant for repairs is to have the same duty to his tenants' lawful visitors as to the occupier in respect of dangers arising from his failure to carry out repairs. A landlord can sue his superior landlord in respect of such liability if the latter is liable to him for repairs where the danger arose out of failure to execute them. Where a visitor's presence is due solely to the use of the premises for a purpose which is not permitted by the tenancy, the landlord will not be liable.

Unifying Accountants

It will be interesting to see what members of the Society of Incorporated Accountants and of the Institute of Chartered Accountants respectively have to say of the scheme for "integrating" the two bodies, which has been jointly worked out by their councils. A copy of the scheme, with an explanatory memorandum, has been circulated to members and informal meetings are to be held under the auspices of the district societies between 14th January and 7th February. On 19th February a special meeting of the Institute will be held and a poll will be taken later. The object of the scheme is to bring into one body the two societies which base professional training on experience in the office of a practising accountant. It proposes that all whose qualifications include such experience should be enabled to become Fellows or Associates of the Institute. Others should be enabled to join the Institute as "incorporated accountants," with the opportunity later of becoming "chartered accountants." A Fellow or Associate would be entitled to four articled clerks, or more in special circumstances, instead of two, as at present. We shall look forward to the debate, both because of the scheme's intrinsic importance in the organisation of a profession allied to our own, and also because of lessons which it may teach us in connection with our own much debated problem of fusion.

Solicitors and "Upside-downers"

Solicitors who may wonder what manual workers think of the solicitor's profession socially will be interested to know that it is graded fifteenth in social standing out of thirty occupations, on a par with news reporters and company directors and immediately after road sweepers. Such, anyhow, is the result of an inquiry put to eighty-two men in East London and reported upon in the *Manchester Guardian* recently. The men questioned, says the report, "ranged from those with something like ordinary middle-class opinions to others whom we came to think of as extreme 'upside-downers,'" for whom "the single principle was the value to society of the job." Medical officers of health and agricultural labourers were accorded the first place, and last of all came barmen, which seems a little ungrateful considering their mortality rate, the highest of any occupation. With all that danger about, one feels, the job might well command more prestige.

Office Accommodation

Office accommodation in London, notwithstanding much new building, is still something of a problem, or perhaps of more than one problem. During 1956, according to the annual report of Messrs. Chamberlain and Willows, there has been a considerable demand for offices of medium size, especially on one floor, and rents have been "well maintained." As building costs remain high, any downward trend, according to the report, seems unlikely. It follows that solicitors either starting on their own or seeking to cut down overheads will incline to deny themselves the luxuries of the new and more expensive buildings. The report states that period houses are still much in demand for office use, and as most of them are protected as historic buildings, they should continue to render useful service for many years. On the other hand, the report notes the difficulty of obtaining consent for conversion to business use of properties previously occupied as residences. We agree that it should be possible to simplify the procedure where changes of use are not likely to result in any damage to the interest of the public and that parts of inner London might be treated as zones in which buildings could be freely used for commercial, office or light industrial purposes without special permission. We hope that planning authorities be advised to grant permission with the minimum of delay where it is clear that a change of user is not against the public interest.

Lower Down-Payments

Never the time and the place and the loved one all together. If it had not been for petrol rationing the sales of motor cars would have been stimulated by the temporary reduction of the initial payment of 50 per cent. on their hire-purchase to 20 per cent. The Government recognise that the motor industry has been hit harder than any other by general economic conditions coupled with the oil crisis, and it clearly has been necessary to consider some help. The relaxation came into force on 21st December last and one of the minor problems of solicitors is to keep pace with the changes in hire-purchase law.

The Land Fund

The annual report of the National Land Fund for the year ended 31st March, 1956 (H.M. Stationery Office, 6d.) published on 28th December, 1956, states that interest on investments each year has greatly exceeded payments, and the balance of the fund on 31st March, 1956, was £59,156,708, nearly all of which was invested in Government securities. Payments from the fund amounted to only £8,303, bringing total payments since its beginning in 1946 to £917,735. At 31st March, 1956, the total amount involved in instances where the Commissioners of Inland Revenue had agreed to accept property in satisfaction of death duties but where the transaction had not been completed was about £330,000. The fund is used to cover expenses incurred when property or artistic objects are accepted in lieu of death duties, and also for certain expenses in connection with historic houses.

FINANCING THE PLUNGE—I

RECENTLY we discussed the cost of beoming a solicitor. Members of a profession have regard to the services which they can render as well as to the money they can make, but it would be idle to deny that the prospect of making an adequate living is the chief factor which most young men and women take into account when deciding whether or not to obey the call to follow the profession of the law. If the cost of becoming qualified and the burden of working are disproportionately high when compared with the financial rewards which can be earned, most promising young men and women may well seek their fortunes elsewhere. Last week, in our centenary issue, the President of The Law Society discussed the prospects of private practice while other contributors described the opportunities which are afforded in the civil service, in local government and in industry. In this article and the one which follows next week, we propose to examine the financial demands which are made on solicitors embarking as principals on private practice.

Self-employment or salaried post?

We start from the assumption (which in most cases is soundly based) that few solicitors will be content for ever to be employed by a firm at a salary unless either they become "salaried partners" with some share in the profits, or their salaries are unusually high. Sooner or later they will have to decide whether to go into some form of public or industrial employment or whether to take the plunge and become principals. Leaving aside the exceptional posts, either as assistant solicitors or "salaried partners," which are available principally in large firms, it seems that the maximum salary which a solicitor can earn in the service of a private firm is in the neighbourhood of £1,200 or £1,500 per annum: the majority of salaries are less than £1,200. The prospect of earning these salaries is not enough to attract any but a minority at the outset of their careers, though they may have to compromise later. On the other hand, while many solicitors who go into salaried employment outside private practice may not receive substantially more than £1,500 per annum, they have the outstanding advantage of pension schemes and certain other attractions which are not always available in private practice, and as we saw last week there are many attractive salaried posts outside private practice.

Putting up one's plate

There are several ways in which a solicitor may become a principal, as distinct from a "salaried partner," whether on his own or in partnership. The smoothest way is to succeed to a partnership by way of a gift or inheritance: this article is not intended for the happy breed who are so placed. One way for a solicitor without fortune is to put up his plate. Presumably all practices have been established in the past, remote or otherwise, by solicitors renting offices, buying themselves some furniture and sitting down to wait for clients, whether or not they begin with a nucleus. Many have failed, but we should say that many more have succeeded. No firm can spring to life fully grown. The prospects now are probably not as good as they were during the two or three years immediately after the war. In small and medium towns there may well be some resentment among established firms towards the squatter, whereas in the larger towns, and especially in London, it is more difficult to make direct contact with potential clients. Possibly the most hopeful fields of activity are the suburbs of large towns.

Partnership desirable

We would not advise a solicitor to put up his plate alone. The law to-day is so complicated that all but the most confident and brilliant find it desirable to spread the load to some extent, but the difficulty about two people starting in practice is that at the beginning there is not a living for even one of them. It is usually possible with patience to find offices, and except in the most coveted positions the rents demanded are not disproportionately high. An adequate office for a small practice can often be obtained for between £150 and £350 per annum, depending on the locality, and the partners, if they are wise, will take care to have one year's rent in hand before they begin. Furnishing an office to-day, with second-hand furniture plentiful, is not difficult even for such comparatively expensive items as safes and typewriters, and figures that we have seen suggest that a small office can be quite adequately furnished for £150. Books are a problem, but they can be bought on the instalment system comparatively cheaply. An important fact to remember is that insurance companies are not enthusiastic about granting negligence policies to solicitors who are embarking in practice on their own for the first time, and it may be found that the premiums are increased. At least one of the two partners should be a good typist: in the early months they will probably find that there is not enough legal work to occupy them and the ability to type presentably will be of the utmost importance and will enable them to save the salary of a shorthand typist. Naturally, it is important, if possible, that one or both partners should have some suitable way of occupying themselves remuneratively during the early months. Many solicitors in the past have undertaken some kind of teaching or have been able to begin with a retainer of some kind. Not all are fortunate enough to begin with clients, and, quite apart from the absence of money coming in, they would find it extremely tedious to spend their days in the office with nothing to do.

Initial cost

It is important to remember that the possibility of commercial borrowing to finance the venture must be excluded, so that the money necessary to start the practice going must be saved by the partners themselves or provided by generous relatives. There is a substantial time-lag between doing work and being paid for it, so that, as with the rent, the partners should be able to provide for their own keep on such a scale as they are prepared to accept for one year. What it comes to is this: between them two partners should have between £800 and £1,000 before putting up their plate. This is made up of up to £350 for rent; £150 for equipping the office, and the balance to cover outgoings and to keep themselves at a very modest standard. It is clear, therefore, that the venture in the absence of a good existing connection or ample funds is not to be recommended to those who have wives and families to support. Towards the end of the year it will have become apparent whether they are going to succeed or not; if not, they can throw their hands in with no bones broken, but financially the poorer, even if in experience they are considerably richer. No one can foresee how long it will take to earn a good living, but many have succeeded remarkably quickly.

P. A. J.

(*To be continued*)

VACANT SITES AND RIGHTS TO LIGHT

THE Prescription Act, 1832, s. 3, provides that when access of light to a building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. The danger that the owners of adjacent buildings may acquire rights over land remaining vacant, or not fully developed, for many years is a serious one as it may take away from the land most of its value for building purposes. The problems facing the owner of such quasi-servient land were discussed at some length at 92 SOL. J. 121, with particular regard to the building controls which then restricted the activities of landowners. Some of these restrictions have now ceased to operate and a further brief note may be useful. It is particularly important to remember that in a few years' time the period of twenty years will have expired since the occurrence of extensive war damage, much of which has not yet been made good. As the steps necessary to protect the rights of the owner of a vacant plot of land may be troublesome, it is essential that they should be considered an appreciable time before the expiration of that period. The Courts (Emergency Powers) (No. 2) Act, 1916, s. 3, enabled a court in certain circumstances to exclude certain time from the period for obtaining a prescriptive right, but there has been no similar enactment during or since the last war.

Agreement to stop time running

As was pointed out in our previous article, the owner of the quasi-servient land has no recourse to the court for assistance. The first step to be taken is, therefore, to request the owner of any building in fact enjoying access of light greater than that to which he already has an enforceable right to enter into an agreement such as will prevent further time running. There are many adequate precedents for such an agreement: useful examples, which provide for cases where one party is a lessee, can be found in Key and Elphinstone, 15th ed., vol. I, p. 73 *et seq.* It should not be forgotten first that the fee simple estate is bound by an easement of light which has been acquired over the land during the time it has been occupied by a tenant, and, further, that a tenant may acquire an easement over adjoining land of his lessor.

It is usual to endeavour to obtain an annual payment from the owner of the building. Frequently the amount will be nominal only, as the purpose of the agreement is merely to prevent the acquisition of a right and no loss or expense is incurred by the quasi-servient owner.

Physical obstruction

The question then arises as to what action the quasi-servient owner can take if the building owner refuses to enter into such an agreement. Unfortunately the only step open to him is to obstruct the access of light to a sufficient degree. In practice this involves the erection of some form of hoarding in respect of which planning permission is necessary. This is why we suggest that an early approach to the building owner is important. In practice, if he concludes that the quasi-servient owner is sufficiently determined, the building owner decides that he will be the loser in the end if he refuses to enter into an agreement, and so physical obstruction is rarely necessary. Although they may wish to impose conditions on the type of obstruction, a local planning authority could scarcely refuse to permit its erection if that action was necessary to prevent the acquisition of a right of light over land on which building was likely in the future.

Duty of solicitor

A solicitor who has a client owning land liable to be depreciated in value by the acquisition of an easement of light would not normally appear to be under any legal duty to go out of his way to raise the question with the client. As authority for this assertion we would quote the decision in *Yager* v. *Fishman & Co.* [1944] 1 All E.R. 552, in which it was decided that there was no duty to remind a client of the date on which a lease might be determined. On the other hand a reminder that the value of his land may be adversely affected would no doubt be very greatly appreciated by an established client even if, on subsequent detailed investigation, it was found that there was no cause for alarm.

S.

KINGSTON-ON-THAMES AND GUILDFORD RENT TRIBUNALS

The Kingston and Guildford Rent Tribunals have moved from their joint offices at Guildhall, Kingston, to 19 Upper Brighton Road, Surbiton. The new telephone number is Elmbridge 0860. The Kingston Tribunal covers Barnes, Epsom, Ewell, Kingston, Malden, Coombe, Richmond, Surbiton, Sutton, Cheam, Esher, Merton, Morden, Walton and Weybridge; the Guildford Tribunal covers Godalming, Guildford, Reigate, Caterham, Warlingham, Chertsey, Dorking, Egham, Haslemere, Leatherhead, Woking, Bagshot, Horley and Hambledon.

Believing that a number of the younger executive, professional and administrative officers in the public services would welcome an opportunity to discuss some of the important questions of public administration, the Royal Institute of Public Administration has organised seven lecture-discussions to take place on Monday evenings at Livingstone Hall, Broadway, S.W.1. The first of these will be on 25th February, and the subjects to be discussed include the relationship between officers and their Ministers, why Parliament has so few committees, whether or not local authorities have enough freedom and what should be expected from our nationalised industries. Authoritative speakers on these and other subjects have been invited from the universities and from public life, and each session will include about an hour for discussion. The final session, on 8th April, will take the form of a panel discussion on "Staffing the Public Services under Full Employment." Full details of the programme can be obtained from the Royal Institute of Public Administration, Haldane House, 76A New Cavendish Street, London, W.1 (telephone LANgham 8881).

The UNIVERSITY OF LONDON announces a course of three lectures on "The Purposes of Criminal Punishment," by Gerald Gardiner, Q.C., to be held at University College (Eugenics Theatre), Gower Street, W.C.1, at 5 p.m. on 28th February, 7th and 14th March. At the first lecture the Chair will be taken by Professor Dennis Lloyd, LL.B., M.A., Quain Professor of Jurisprudence in the University of London. The lectures are addressed to students of the University and to others interested in the subject. Admission will be free, without ticket.

Landlord and Tenant Notebook

RENT CONTROL: NOTIONAL SUB-LETTINGS

THE second and third defendants in *Cadogan and Another* v. *Henthorne and Others* [1957] 1 W.L.R. 1; *post*, p. 64, were, on 24th December, 1954, tenants of a dwelling-house to which the Rent, etc., Restrictions Acts, 1920 to 1939, would at one time not have applied. Their dwelling consisted of the ground floor and basement of a four-storeyed London house rated at £101 a year; their immediate landlord, the first defendant (who did not defend), was the underlessee of that house at a rent of £16 1s. a year; that underlease, which had been extended by the Leasehold Property (Temporary Provisions) Act, 1951, had been carved out of a lease which reserved a rent of £4 a year and which expired on 24th June, 1952. And the question became one which might be put in this way: had any provisions of the 1954 legislation (the Housing Repairs and Rents Act, 1954, and the Landlord and Tenant Act, 1954)—designed to remove certain anomalies—overlooked the position revealed?

The anomalies

Two decisions had shown that the Rent Acts had not succeeded in protecting everyone who might be considered worthy of protection.

The defendant in *Cow* v. *Casey* [1949] 1 K.B. 474 had been sub-tenant of part of a house outside the rateable value limits of the Rent Acts, which had been let to a limited company which employed him. In June, 1948, the company (after having received a " notice to quit " which was invalid) gave up possession to the head landlord, the plaintiff in the action; before doing so they served the defendant with a notice to quit expiring two days after they had agreed to leave. It was held that the part of the house was not a dwelling-house to which the Acts applied. If the mesne tenants, after surrendering by deed, had refused to move out, the head landlord could have sued them and the sub-tenant of part for possession, their claim being to recover a house to which the Rent Acts did not apply.

In *Knightsbridge Estates Trust, Ltd.* v. *Deeley* [1950] 2 K.B. 228 (C.A.) the lease of a London house reserving a rent of less than two-thirds of its rateable value expired on 25th December, 1948. The defendant had held an underlease of the whole house at more than two-thirds of its rateable value, but was held not to be entitled to protection against the head lessors. Asquith, L.J., agreed that it was unintended and unjust, but the provision sought to be relied upon, the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3), presupposes the existence of a head tenancy " to which this Act applies." And s. 12 (7), the object of which was to prevent a very low rent from becoming a standard rent, prevented the Act from applying.

The amendments

The *Cow* v. *Casey* anomaly was dealt with by the Housing Repairs and Rents Act, 1954, s. 41, which came into force on 30th August of that year, and provided: " Where a dwelling-house to which the Act of 1920 applies (hereinafter referred to as ' the sub-let part ') forms part of premises, not being such a dwelling-house, which have been let as a whole on a superior letting, then from the coming to an end of the superior letting the operation of the Rent Acts in relation to the sub-let part shall be the same as if in lieu of the superior letting there had been separate lettings of the sub-let part and the remainder of the premises, for the like purposes as under the superior letting, and at rents equal to the just proportion of the rent under the superior letting."

To dispose of the *Knightsbridge Trust* case anomaly, the Landlord and Tenant Act, 1954, s. 15, which came into operation on 1st October of that year, enacted: " For the purposes of s. 15 (3) of the Act of 1920 (which provides that, where the interest of a tenant comes to an end for any reason, a sub-tenant to whom the premises or any part have been lawfully sub-let shall be deemed to become the tenant of the superior landlord), the interest of a tenant under a long tenancy shall, notwithstanding the provisions of s. 12 (7) of that Act, not be disregarded by reason only that the rent payable in respect of the tenancy is one falling within the said sub-section (7) . . ."

Applicability

Did either of these provisions apply to the case? At first sight, it looked as if the last-mentioned enactment, the Landlord and Tenant Act, 1954, s. 15, had been designed to extend protection to the sub-tenant defendants; there had been a long tenancy, which by s. 2 (4) means a tenancy granted for a term of years certain, granted for a term of years exceeding twenty-one years, and the sub-tenants had held of the grantee.

But, it was urged in reply, all that the Landlord and Tenant Act, 1954, s. 15, says is that the interest of a tenant under a long tenancy shall not be disregarded; very well, then, regard it and what do we find?—we find that it was a tenancy of a house rated at £101 a year, which is outside the Acts, and the mesne tenant's interest is, therefore, not one to which the Rent Acts applied.

This, if I may so put it, is where the Housing Repairs and Rents Act, 1954, s. 41, comes in. The difficulty facing the defendants was that the section did not make it clear to whom the sub-let part and the remainder of the premises were to be supposed to have been let. The plaintiff's contention was that it meant notional sub-lettings of the ground floor and basement to the second and third defendants and of the rest of the house to the first defendant: the rent of £16 1s. paid by the first defendant should be apportioned, leaving the second defendants unprotected because *they* had not held a long tenancy and the rent at which they had held or were deemed to have held was less than two-thirds of the rateable value of the dwelling.

Hallett, J.'s view was that one ought not to be put off by the production of such an artificial result as the assumption that a rent of £150 was a rent of about £7 (an apportioned part of the £16 1s.): strange results are not uncommon in solving Rent Restrictions Acts problems. Nevertheless, having to choose between reading the " separate lettings of the sub-let part and of the remainder of the premises " as meaning (i) separate lettings of the two parts to the mesne tenant and to the sub-tenants and (ii) separate lettings of each part to the mesne tenant in each case, " for the like purposes as under the superior letting, and at rents equal to the just proportion of the rent under the superior letting," he preferred (ii). The sub-tenants were, accordingly, no longer excluded from protection as sub-tenants.

R. B.

HERE AND THERE

ALL-EMBRACING

THEOLOGY, the science of the divine, must stretch beyond the shining of the furthest star and yet every cluck of every hen and every wriggle of every centipede must have a place within its scheme. It must, as it were, stretch to infinity in both directions. Science has lately discovered that microbes suffer from microbe illnesses. For those microbe illnesses, too, there must be a place in theology. So it is with the law; and, though the superficial would like to imagine its sages, philosophers symbolically robed in scarlet and ermine, as perpetually pondering the liberty of the citizen, the authority of the State, the structure of the family, the duties of parents, the mysteries of bills of lading, the excellences of bills of exchange and similar high and transcendent problems, that cannot be. These things, indeed, they must ponder. But if the law is to be of any use at all to the ordinary man she must not carry her nose so high in the air as not to be able to give a sensible ruling on all those little-considered trifles with which his life is littered, dog-collars, old hen-houses and second-hand waistcoats. In the house of the law there are many chambers. Some of them may be superb reception rooms fit for patriots and merchant princes, but others are more like a Portobello Road junk shop. A junk shop? Well, there are times when the courts remind one of nothing so much as a popular eating-house somewhere beyond Aldgate. (And quite right, too: the law would have no business to ignore the world beyond Aldgate, pretending that it stopped short at Leadenhall Street, Fenchurch Street and the Bank of England.) Early last year, Mr. Justice Harman in the Chancery Division was asked to decide whether bottled salmon processed in brine was "fish" or "fish products frozen or preserved," a distinction vital (as must be obvious to any thoughtful person) to its import into this country or its exclusion. He was mercifully spared the task of investigating the nature of "kidney knobs without kidney," another delicacy figuring in the General Import Licence of the Board of Trade.

VARIOUS FOODS

LAST year also the sanctity of the British Sunday and the operation of the Shops Act, 1950, required the Queen's Bench Divisional Court to determine whether raw kippers were "meals" or a packet of tea was "refreshment." As Mr. Justice Donovan sapiently observed: "When you get down to food it is impossible to conceive a 'reasonable person.'" On this matter counsel might well have invoked the high authority of the late Hilaire Belloc:—

> "Alas! What various kinds of food
> Divide the human brotherhood.
> Birds in their little nests agree
> With Chinamen, but not with me.
> The French are fond of slugs and frogs,
> The Siamese eat puppy-dogs.
> I feel my native courage fail
> To see a Gascon eat a snail.
> I dare not ask abroad for tea.
> No cannibal shall dine with me.
> And all the world is torn and rent
> By varying views on nutriment."

Yet without the aid of the law's pet criterion, the ordinary reasonable man, the court courageously tackled the twin problems of the kippers and the tea. "What better meal can you have, if you like kippers?" asked the Lord Chief Justice rhetorically, and, cooked or raw, he held them to be a meal, no less than smoked salmon or trout. But, notwithstanding the versatility of the human stomach, tea in the packet was not refreshment. Many are the gastronomic hints which one gets from the Lord Chief Justice. To a doubting counsel he said not long ago: "Don't you like braised oxtail? I do," which sounds almost like a line from one of his favourite Victorian music-hall songs.

EELS AND LITERATURE

THE last sittings of the old year in the Divisional Court were enlivened by a contest between jellied eels on the one hand and literature on the other at the corner of Goulston Street and Whitechapel Road. Stallholders and barrow-boys crowded in to see Lord Goddard, Mr. Justice Hilbery and Mr. Justice Ormerod bring the full power and dignity of the law to bear on the problem as presented at the Bar by two Queen's Counsel with attendant juniors. The East End goes into battle in fine style. In the first place, the Stepney Borough Council had awarded the trading pitch to literature in preference to jellied eels. Jellied eels had appealed to the magistrate at Thames Police Court, where Mr. Leo Gradwell (remembering perhaps the watery deeps which he had known in his naval days) allowed the appeal. So jellied eels could compete on equal terms with such stimulating literary products as "Love in Many Lands." When counsel suggested that the contest was likely to go very much in favour of the latter, Lord Goddard expressed a doubt: "I don't know. Jellied eels are most popular these days." Nevertheless the court unanimously restored the rights of literature, though the Lord Chief Justice said: "I personally would be very glad if some *modus vivendi* could be found." Encouraged, no doubt, by these words, jellied eels returned to the charge four days later to ask Mr. Justice Hallett and Mr. Justice Ashworth for a stay of execution, a matter, it was urged, of the greatest importance because of the Christmas trade, but it was the last hour of the last day of the sittings and, holding that the application should have been made earlier, the court dismissed it. Gray's Inn is in possession of a silver fish-slice decorated with the figure of a fish and inscribed: "To Stephen Gaselee, one of His Majesty's Counsel, in Respectful Acknowledgment of his distinguished services in the cause *Saunders* agt. *Wainnan* in Michaelmas Term 1819." (Gaselee was later a judge and the original, it is supposed, of Mr. Justice Stareleigh in Pickwick.) All that is known of the "cause" is that it concerned a dispute over some fish on a stall in Billingsgate Market. If only our days were as spacious, a Queen's Counsel would soon be receiving a commemoration fish-slice with an eel *motif*.

RICHARD ROE.

Erratum: Perker, not Parker, was Pickwick's solicitor (p. 41, *ante*).

Mr. R. A. D. COPPER has been appointed Official Receiver for the Bankruptcy District of the County Courts of Plymouth and Torquay.

Mr. PERCIVAL CECIL LEWIS, Attorney-General, Leeward Islands, has been appointed Puisne Judge of the Supreme Court of the Windward and Leeward Islands.

THE HONORARY SOLICITOR

WITH the strains of Auld Lang Syne on New Year's Eve, many honorary solicitors throughout the country relinquish their appointments, usually temporarily. All kinds of organisations boast an hon. solicitor, and at times one wonders what they all find to do. For instance, the programme of the last amateur dramatic show that I went to see named the honorary solicitor immediately after the producer and the stage manager.

One organisation that in the last twelve months has made its hon. sol. earn his title is our local chamber of trade. As hon. sec. I know the variety of problems that were pushed round, and as a solicitor in private practice I was often glad I had not got to give an "off the cuff" answer myself.

The honorary solicitor's job throughout the year has been primarily to remind members, and particularly committee members, what is in the rules. Sometimes they have been silent, as on the point of "What constitutes a member for the purposes of the subscription when a principal company wants a subsidiary to join? and conversely should a principal company be asked to pay the extra fee for each of its subsidiaries?" It was also natural that the Shops Act, 1950, the Landlord and Tenant Acts and the Rating Acts provided scope for elucidation from time to time, though I must confess I was surprised at the detailed knowledge of a number of the lay members of those matters which particularly affected themselves.

During this last year one of the first differences in the committee arose over the attitude to be adopted to the new rating valuations. As lawyers, hon. sec. and hon. sol. found it unthinkable that members should be advised to do anything but pay up unless they thought that a particular injustice had been done them, and not to refuse on principle in order to create chaos for someone (it would not have been the right body who would be embarrassed anyway). In this connection readers will have seen recently that as a result of the representations made by the National Chamber of Trade and other similar organisations Mr. Duncan Sandys proposes to "unshear the lamb" to the extent of 20 per cent.

The Town Police Clauses Act, 1847, was one that has been twice considered. The first time was in relation to the minimum height for shop blinds, which apparently is eight feet almost everywhere. In our town there is not a single shop which has a blind that complies, excepting a few with private forecourts. The other instance was in connection with a proposal to force heavy through traffic to use our circuitous by-pass instead of rumbling through the narrow and already overcrowded streets of the town. So far as this latter point is concerned the local town council are "looking into the matter," and this brings home one aspect of local government procedure very forcibly: its infinite capacity for delay. In March the chamber started agitating over the provision of car parks; no decision on what to do was worth taking until after the May elections. The matter then went before the new highways committee as soon as it had been chosen (meeting every two months when on form), who recommended to the council (meeting every month except in the summer) that the public be asked to give their opinions. The council agreed and referred it back to the highways sub-committee, who suggested a special sub-committee for these problems. So far, after nine months that special sub-committee has had one preliminary meeting. There can be little doubt that, when it comes to a decision, that will involve a charge to the rates, and this year's estimates will have been made by then, so that nothing will be done until next year. As business premises contribute about 23 per cent. of the local rates it is hardly surprising that councillors are not always viewed sympathetically.

Quite a large part of the business of the chamber consists of the consideration of the terms of Bills to be passed as well as of the Acts which have been passed. Like most solicitors, I find the past is more than enough to digest without worrying unduly about the Bill that is coming; and without a specific problem to apply to the probable terms it is particularly difficult to decide what cannot be borne. Perhaps this is what happened some ten years ago with the Statistics of Trade Act; members are now condemning it as a gross impertinence.

In between times, the honorary solicitor has carried out searches in the Companies Register on behalf of the chamber, and inquiries at local and county level on the attitude to street traders on main roads, and advised on the essential procedure required before changing the early closing day. For all this patient work we said of him on the annual dinner menu: "My learned profession I'll never disgrace, by taking a fee with a grin on my face."

N. P.

BOOKS RECEIVED

A History of English Criminal Law and its Administration from 1750. Volume 2, The Enforcement of the Law, and Volume 3, The Reform of the Police. By LEON RADZINOWICZ, LL.D. (Cracow), LL.D. (Rome), LL.D. (Cantab.). pp. xvii and (with Index) 751; xvii and (with Index) 688. 1956. London: Stevens & Sons, Ltd. £4 4s. net (each volume).

The Scientific Investigation of Crime. By L. C. NICKOLLS, M.Sc., A.R.C.S., D.I.C., F.R.I.C., Director, The Metropolitan Police Laboratory, New Scotland Yard. pp. xiii and (with Index) 398. 1956. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

Redgrave's Factories, Truck and Shops Acts. Nineteenth Edition. By JOHN THOMPSON, Q.C., M.A., of the Middle Temple and the Northern Circuit, and HAROLD R. ROGERS, M.A., sometime His Majesty's Deputy Chief Inspector of Factories. pp. lxxvi and (with Index) 1366. 1956. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £2 17s. 6d. net.

Paterson's Licensing Acts. Sixty-fifth Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. pp. cxi and (with Index) 1834. 1957. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. £3 5s. net.

Law and Orders. Second Edition. By Sir CARLETON KEMP ALLEN, M.C., Q.C., D.C.L., Hon. D.C.L. (Glasgow), F.B.A., J.P., of Lincoln's Inn. pp. xxv and (with Index) 482. 1956. London: Stevens & Sons, Ltd. £2 2s. net.

Late Sittings. By A. LAURENCE POLAK, B.A. (Hons. Classics), (Lond.), Solicitor of the Supreme Court. Illustrated by LESLIE STARKE. pp. ix and 107. 1956. Chichester: Justice of the Peace, Ltd. 9s. 6d. net.

Quarter Sessions. Index of Common Penalties and Formalities. By G. N. C. SWIFT and R. L. GRAHAM, Clerk and Deputy Clerk of the Peace of Cumberland. 1956. Chichester: Justice of the Peace, Ltd. 10s. 6d. net.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Interest Paid under Town and Country Planning Act, 1954

Sir,—In the third paragraph of his article on "Settlements, Charities and the Town and Country Planning Act, 1954," on p. 890 of the SOLICITORS' JOURNAL for 8th December, 1956, Mr. J. F. Garner has stated that interest paid under the Act on a Pt. I or Pt. V payment "is not to be treated as income." I must confess to being rather puzzled and perturbed by this statement. I should be glad if you could ask the author to throw a little more light on the point and to quote any authority that supports his view.

As far as I know, there is nothing in the Act or in S.I. 38 of 1955 which requires this interest to be treated as capital. The S.I. merely says that, in the case of a settlement, the principal and interest in respect of any claim under either Pt. I or Pt. V would be paid to the trustees. I should not have thought that was enough to defeat the life tenant's claim to the interest. For tax purposes the interest is looked on as income and income tax is deducted at the standard rate before payment. Why should the net amount received by the trustees be added to capital? On the face of it I should have said the life tenant ought to have it, unless there was a definite authority to the contrary.

The intention of the 1947 Act was, in effect, to reduce the market value of land as from the appointed day by taking away such development value as it then had, compensation being paid to the owner and interest also being paid from the appointed day to the date when compensation would be paid out. The 1953 and 1954 Acts changed all that. But in the meantime transactions at less than the full value of the land had taken place and planning decisions (which affected income as well as capital) had been made on the assumption that compensation under Pt. VI of the 1947 Act would be paid. Immediate payments under Pts. I and V of the 1954 Act were intended to make good the capital loss thereby suffered, and I feel that the interest on those immediate payments should clearly go to the life tenant to make up the loss in income he has suffered while the trustees have been waiting for that compensation to be paid.

Mr. Garner supports his statement by referring to "the rules governing compensation under Pt. II," but the Act does not, as far as I can see, provide for any interest to be paid on compensation under Pt. II. Nor is that surprising, for Pt. II payments are to be for planning decisions made after 1954. It was, doubtless, envisaged that there would be only a comparatively short time lag between decision, claim and payment, and no appreciable hardship to owner or life tenant.

Section 17 of the 1954 Act added an extra one-seventh to the unexpended balance of established development value before that was again "attributed" to the land in question, and it has often been said that the additional one-seventh represented roughly the interest (less tax) which would have been paid if the whole of the claim holding had been paid out in cash. That may well be, but the Act does not say so. The law, therefore, knows strictly nothing about any connection between that one-seventh and interest or income. In any case, I do not see that s. 17 can have any bearing on the entitlement of a life tenant to the interest paid on an immediate payment under Pt. I or Pt. V.

I would agree that the whole of any compensation paid under Pt. II must be treated as capital, as should the principal paid under Pt. I or V, but it seems to me that interest paid under Pts. I and V is income, subject, of course, to any apportionment that might have to be made at a death which occurred between the appointed day and the date of payment. Those are, however, only my own views and I know of no authority to support them. The points, surely, arise in many trusts and have a general interest. Consequently, I should be grateful if Mr. Garner could elaborate his brief statement, and say if he knows of any authority for it.

W. T. WESTAWAY.

London, E.C.4.

[Mr. J. F. GARNER writes: "I agree and retract my former view."]

Basic Income

Sir,—In view of the numerous proposals under the Legal Aid Scheme, I venture to suggest that substantial reform is necessary.

Trade unions, with their powerful influence, have been able to raise the standard of wages three to four times.

The medical profession have also a powerful union which has equally been able to raise the income of its members.

It is high time that the legal profession should adopt a radical reform of a similar type. It will be interesting to know if the following proposals would meet with support:—

(1) That every solicitor on qualifying and taking out a practising certificate should be paid an *income* of £500 a year by the Treasury. This would continue until income of £1,500 a year, and would taper off to income of £2,000 a year. In consideration of this, the legal profession would give free advice, as proposed by that part of the Legal Aid Act which is not yet in operation.

(2) All litigation, conveyancing and general matters would continue as heretofore, except that lump sum bills should be extended in the manner already partially adopted.

This scheme would give every qualified man who entered the profession a *basic income* on which to build a private practice, if he had the initiative and desire. Under any circumstances, it would be something to compensate for the vast dislocation in the standard of income resulting from the pressure of the trade unions in their respective spheres.

The benefits to the profession as a whole need not be argued. The cost to the Treasury would be approximately 8 or 9 million pounds a year, against which would be set off the benefits arising from the extension of free advice proposed under the Legal Aid Scheme, but not yet in operation.

The cost is, therefore, a very small sum for a real reform, which is long overdue.

SOLICITOR.

Liverpool, 2.

Surviving Joint Tenant—Express Power to Convey

Sir,—I have read with considerable interest the articles appearing on pp. 853 and 957 of vol. 100 of the SOLICITORS' JOURNAL, and I feel that I am not alone in respectfully agreeing with the general view expressed in the former, namely that the question is practically insoluble as the law at present stands. Further, I agree that there would seem to be no way of avoiding the difficulty in the future by incorporating in conveyances clauses purporting to exclude severance or making it subject to particular forms of notice, in spite of the suggestions put forward by other readers.

Although it is doubtless a very vain hope that Parliament would find time to consider legal reform on a point which would appear to Parliament to be largely academic (although in fact it does, as the profession knows, very frequently affect "the man in the street" from a practical point of view), I would suggest that some amendment to the Property Acts is the only solution.

My feeling is that severance in these cases should only be effective and binding upon a purchaser for value if notice of such severance is given by means of the entry of a land charge at the Land Charges Registry, or the Land Registry, as the case may be.

I should be very glad to hear the views of your other correspondents in this matter, and I seriously think that if there is a strong body of opinion, the matter might be put up to The Law Society with a request that the Council should consider including it in their proposals for legal reform for submission to Parliament.

ERNEST I. PRICE.

Ashtead, Surrey.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CEYLON: TITLE TO LAND: PRESCRIPTION: PARTITION DECREE OBTAINED BY FRAUD: CONCLUSIVE AGAINST ALL PERSONS: REMEDY IN DAMAGES

Adamjee and Others *v.* Sadeen and Others

Earl Jowitt, Lord Oaksey, Lord Cohen, Lord Keith of Avonholm, Mr. L. M. D. de Silva. 11th December, 1956

Appeal from the Supreme Court of Ceylon.

Pursuant to the provisions of the will of one Idroos Lebbe Marikkar there was conveyed to his daughter, Savia Umma, by deed in 1888 certain land at Kollupitiya, Colombo Western Province, subject to a condition in the will that she, her issue or heirs should not sell, mortgage or alienate the property but should hold it in trust for her grandchildren. In 1949 a partition action was begun by seven of her grandchildren (she and her children being dead) against her thirty-six other grandchildren, the forty-three grandchildren between them (the present respondents) claiming to be all the persons then interested in the property. A decree for sale having been made in that partition action, the present appellants, who were not parties to that action, and who claimed to be entitled to the property as successors in title of a person who had acquired it under a registered fiscal's conveyance —which did not set out the restrictions on Savia Umma's power to deal with the property contained in the deed of 1888—executed in 1916 as a result of mortgage proceedings against Savia Umma and her husband, thereupon in 1950 instituted the present proceedings, pleading that they and their predecessors in title had been in the sole and uninterrupted and undisturbed possession of the property from 1916, and that they had prescribed to the property, and they claimed to have the decree in the partition action set aside as null and void, or, alternatively, damages. The trial judge found that the respondents had acted fraudulently and collusively in failing to make the appellants party to the partition action or to give them any notice of it. Section 9 of the Partition Ordinance, 1863, provides that a decree in a partition action shall be conclusive against "all persons whomsoever, whatever right or title they have or claim to have in the said property," subject to their having a claim in damages if prejudiced by the decree. By s. 3 of the Prescription Ordinance, 1871, proof by a plaintiff of undisturbed and uninterrupted possession of immovable property by a title adverse to that of the defendant for ten years previous to the bringing of the action entitled the plaintiff to a decree, "provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute." The trial judge held that the appellants were not entitled to have the partition decree set aside, and in the result awarded them damages amounting to Rs.29,687/50, and his decision was affirmed on appeal to the Supreme Court of Ceylon. The trial judge had found that the value of the property at the date of the action was Rs.100,000, and it was that figure which the appellants had claimed under the alternative head of damages.

Lord Cohen, giving the judgment, said that there was a long line of authority in Ceylon, for which justification could be found in the language of s. 9 of the Partition Ordinance, that a partition decree was conclusive against all persons whomsoever, including a person whose title to an interest in the land partitioned had been concealed from the court by fraudulent collusion between the parties to the partition action. Accordingly, the appellants were not entitled to have the partition decree set aside and their only remedy was in damages: *Jayawardene* v. *Weerasekera* (1917), 4 C.W.R. 406, at p. 407; *Nono Hami* v. *De Silva* (1891), 9 S.C.C. 198, at p. 199. A paramount duty was cast upon the court by the Partition Ordinance to ascertain by a proper investigation of title who were the actual owners of the land sought to be partitioned before entering a decree which was good and conclusive against the world: *Mather* v. *Tamotharam Pillai* (1903), 6 N.L.R. 246, at p. 250. The appellants under the Prescription Ordinance had acquired a good title to the property and were entitled to be compensated by way of damages to the full extent of the value of the property as a whole, namely, Rs.100,000. Once parties relying on prescription had brought themselves within s. 3, the onus rested on anyone relying on the proviso to that section to establish their claim to an estate in remainder or reversion at some relevant date, and they could not discharge that onus unless they established that their right fell into possession at some time within the period of ten years.

Appearances: *Sir Lynn Ungoed-Thomas*, Q.C., *Raymond Walton*, *Eric Amerasinghe* and *L. Kadirgamar* (*Farrer & Co.*); *Ralph Millner* and *J. Bisschop* (*T. L. Wilson & Co.*).

[Reported by Charles Clayton, Esq., Barrister-at-Law] [2 W.L.R. 67

CEYLON: TITLE TO LAND: REGISTRATION: PRIORITIES

Colombo Apothecaries' Co., Ltd. *v.* Peiris and Others

Earl Jowitt, Lord Oaksey, Lord Cohen, Lord Keith of Avonholm, Mr. L. M. D. de Silva. 11th December, 1956

Appeal from the Supreme Court of Ceylon.

Solomon Rodrigo, the original owner of No. 125 Glennie Street, Slave Island, Colombo, by an unregistered deed of gift, gave the property in 1870 to his son and sole issue, Lorenzo Rodrigo, reserving a life interest to himself and creating a *fidei commissum* in favour of his son's descendants, which, as the deed was executed in 1870, was effective for four generations. Solomon died intestate in 1873, and Lorenzo died intestate in 1899, leaving a son, Lawrenti, and a daughter, Madalena. In 1895 Lawrenti, who, since his father was then still alive, had no title or interest in the property, purported to transfer by registered deed the whole of the property to one Dias, whose interest, if any, was subsequently acquired by the present appellant in 1926. Lawrenti and Madalena having each died intestate in 1939 and 1934 respectively, the first respondent, Martha Agnes Peiris, who was one of the two daughters of Lawrenti, claimed in 1947 against the appellant that she and her sister and the four children of Madalena (all of whom were respondents to this appeal) were entitled to the property as co-owners and asked for a sale under the Partition Ordinance (Legislative Enactments of Ceylon, 1938 rev., c. 56). Section 39 of that Ordinance provided that every deed of transfer of land, unless registered, "shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration, by virtue of any subsequent deed . . . which shall have been duly registered . . ." The District Court of Colombo held that as the deed of 1870 remained unregistered at the time of the acquisition of title by Lawrenti on his father's death, the subsequent but duly registered deed of 1895 prevailed. On appeal, the Supreme Court of Ceylon reversed the decision of the District Court in favour of the present appellant, but on a ground not relevant to this report.

Mr. L. M. D. de Silva, giving the judgment, said that their lordships agreed with the District Court. As the deed of 1870 remained unregistered at the time of the acquisition of title by Lawrenti on his father's death, the duly registered deed of 1895, though it was registered at a time when it passed no interest, became on the death of Lawrenti's father a duly registered instrument passing title which prevailed over the unregistered deed and was sufficient to defeat its provisions. Accordingly, the appellant company became entitled to the undivided half share of the property claimed by the two daughters of Lawrenti. Further, inasmuch as the appellant had been in continuous and undisturbed possession of the entire property for twenty-six years, it had acquired a prescriptive title to the half share of the four children of Madalena who had claimed that half share as fiduciaries under the deed of gift of 1870 on the death of Madalena in 1934. The plaintiff-respondent had therefore no interest in the property and her action must be dismissed. Appeal allowed; decree of the Supreme Court set aside and that of the District Court restored. The plaintiff-respondent, who was the only appellant to the Supreme Court and the only respondent represented on this appeal, must pay the costs of this appeal and the costs of the appeal to the Supreme Court.

APPEARANCES: *Raymond Walton, Eric Amerasinghe* and *L. Kadirgamar* (*Farrer & Co.*); *Ralph Millner* and *J. Bisschop* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister at-Law] **[2 W.L.R. 60**

House of Lords

NATURALISATION: STATUTE OF 1705: EFFECT OF PREAMBLE

A.-G. *v.* Prince Ernest Augustus of Hanover

Viscount Simonds, Lord Normand, Lord Morton of Henryton, Lord Tucker and Lord Somervell of Harrow

5th December, 1956

Appeal from the Court of Appeal ([1956] Ch. 188; 99 SOL. J. 871).

A great-great grandson of Ernest Augustus, Duke of Cumberland (a descendant of the Electress Sophia) who succeeded to the throne of Hanover in 1837, started an action against the Attorney-General for a declaration that he was a British subject, having regard to the statute 4 Anne c. 4 in 1705. This Act, after reciting in the preamble that the Crown, on the death of Queen Anne without issue, was limited to the Electress Sophia and her issue, continued "to the end [that] the said Princess Sophia . . . and the issue of her body, and all persons lineally descended from her, may be encouraged to become acquainted with the laws and constitutions of this realm, it is just and highly reasonable, that they, in Your Majesty's lifetime . . . should be naturalised" and proceeded to enact that "the said Princess . . . and the issue of her body, and all persons lineally descending from her, born or hereafter to be born, be and shall be . . . deemed . . . natural born subjects of this Kingdom," Roman Catholics excepted. Vaisey, J., held that the enacting words must be read as limited to descendants of the Electress Sophia born in the lifetime of Queen Anne. The Court of Appeal reversed this decision. The Attorney-General appealed to the House of Lords.

VISCOUNT SIMONDS said that the question in this appeal was to be answered on a consideration of the statute 4 Anne c. 4. The joint effect of the Bill of Rights and the Act of Settlement was that on Queen Anne's death the Crown would descend on the Electress Sophia of Hanover and the heirs of her body. In 1705 there were living six lineal descendants of the Electress. At that time by the common law only those persons born on English soil were subjects of the English Crown, nor was there any general Act enabling aliens to be naturalised. But from early times special statutes had been passed conferring the status of natural born subjects on individuals or more or less closely defined classes of individuals. One aspect of the historical background was relied on by the Attorney-General. The Act 7 Jac. I c. 2 of 1609 provided that all persons who were to be naturalised must first receive the Sacrament of the Lord's Supper and take the Oath of Allegiance and the Oath of Supremacy in the manner therein prescribed. It was the existence of this Act which made it necessary to pass an Act preliminary to the one which the House had to consider. It was the statute 4 Anne c. 1 of 1705. It enacted that whereas the Electress "and the issue of her body are to be naturalised and by reason of their being beyond the seas they cannot qualify themselves in order thereto" according to the formalities of the Act of James I, a Bill for their naturalisation should be exhibited "any law, statute, matter or thing whatsoever to the contrary notwithstanding." It might be that the generality of the words "issue of her body" could be held to be limited to those who were at the date of the Act "beyond the seas" and not to include persons then unborn. But, whatever might be the intention of Parliament to be gleaned from the earlier Act, it was clear that a different and wider intention inspired the later one and it was only from the consideration of its language that it could be determined how different and how much wider was its intention. For the respondent it was contended that he was the issue of the body of the Electress Sophia, a person lineally descended from her and "hereafter born" (i.e., born after the passing of the Act) and that he was therefore within the scope of the enacting provision. For the Attorney-General it was contended that the generality of the enacting words must be restricted to persons born in Queen Anne's lifetime, such a restriction being imposed as a matter of construction of the Act by a consideration of its context, viz., the historical and political background, the relevant state of the law and the verbal context of the Act including the preamble. It was urged that the purpose stated in the preamble was an expression of the intent of Parliament clear enough to restrict the generality of the enacting words. This contention was met by the proposition that the enacting words were clear and unambiguous and could not be cut down by the preamble. But one must examine every word of the Act in its context, using "context" in its widest sense, including other enacting provisions of the same Act, its preamble, the existing state of the law, other statutes *in pari materia* and the mischief which the Act was intended to remedy. The Attorney-General relied on the alleged absurdity and inconvenience of not restricting the general words, a result which must be presumed to have been foreseen in 1705. But one could not say that there was such a manifest absurdity as to entitle one to reject their construction. The argument in favour of restricting the words should be rejected so far as it was based on any consideration other than the words of the Act itself. Turning to the preamble, it was urged that only those could be naturalised in Queen Anne's lifetime who were born in her lifetime. This was self-evident if the word "naturalised" meant the same thing as the words which followed "and be deemed, taken and esteemed natural born subjects of England." But before one reached those words one had already learnt from the earlier part of the preamble that one was concerned with the Electress Sophia and the issue of her body and all persons lineally descended from her. At least some persons then unborn were to be naturalised by the Act. It was not impossible for words of such generality to be restricted by their context, but for such restriction a compelling reason must be found. The preamble to an Act was not to influence the meaning otherwise ascribable to the enacting part unless there was a compelling reason for it. It was not a compelling reason that the enacting words went further than the preamble indicated. Still less could the preamble affect the meaning of the enacting words when its own meaning was in doubt. Here one must give the enacting words their *prima facie* and literal meaning.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *Clauson* (*Treasury Solicitor*); *Wilberforce*, Q.C., and *Knox* (*Farrer & Co.*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 1**

Court of Appeal

POLICE: INJURY TO CONSTABLE THROUGH NEGLIGENCE OF DEFENDANTS: RIGHT OF RECOVERY BY POLICE AUTHORITY OF WAGES PAID DURING INCAPACITY

Receiver for the Metropolitan Police District *v.* Croydon Corporation and Another

Monmouthshire County Council *v.* Smith

Lord Goddard, C.J., Morris, L.J., and Vaisey, J.

4th December, 1956

Appeals from Slade, J., [1956] 1 W.L.R. 1113; 100 SOL. J. 634, and Lynskey, J., [1956] 1 W.L.R. 1132; 100 SOL. J. 635.

Two police constables in the employ of different police authorities were injured while on duty by the negligence of the defendants and as a result of their injuries were incapacitated from performing their duties for several months. During that period of incapacity the respective police authorities, acting under statutory regulations, paid the constables their full wages and allowances. An action brought by one constable claiming damages for his injuries was settled on the payment by the appropriate defendants of a sum of money; the other constable was successful in the prosecution of his action for damages against the defendants responsible for his injuries. In both actions the constables made no claim for loss of wages. The police authorities, basing their claims in quasi-contract, sued the appropriate defendants for the amounts of wages and allowances paid to the constables during the period of their incapacity. Slade J., held that the defendants in the first case had obtained the benefit of the receiver's payment of wages in the discharge of their liability to the police constable and were indebted to the receiver for the same amount. Lynskey, J., held in the second case that, as none of the wages could have been recovered by the constable in his action against the defendant, he having suffered no loss in respect thereof, there was no obligation on

the part of the defendant to pay the county council the amount they had paid the constable and which they were obliged by statute to pay. The defendant corporation appealed in the first case, the county council in the second.

LORD GODDARD, C.J., said that the plaintiff in each case had not been called on to pay anything which they would not otherwise have had to pay. Their obligation was to pay the police officers during the time that they were off duty through disablement, provided that the disablement arose in the course of their service. Therefore, the plaintiffs were no worse off than they would have been if these accidents had never taken place. It followed that the only loss which the police authorities had sustained was that they had had to pay the police officers although they were deprived of their services. That loss was recoverable in certain cases in an action *per quod servitium amisit*, but such an action would not lie in the case of a police officer because he was not a servant of the police authority, but of the Crown. The principle that was prayed in aid here was that money which constituted unjust enrichment of a person might be recovered in an action for money had and received, or money paid to the use of the person. But the obligation of the defendants was to compensate the injured men, and to pay them the damage which they had sustained. Having paid that, their obligation was at an end.

MORRIS, L.J., agreeing, said that, if an employer makes a contract for a fixed period with a servant and agrees to pay him a fixed sum, whether the servant is ill or well, and if the servant is injured by a wrongdoer and is away for a week, the servant has not then suffered any loss of pay, and the wrongdoer cannot be liable for what the servant has not lost.

VAISEY, J., also agreed. First appeal allowed. Second appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *Gerald Gardiner*, Q.C., and *R. C. Hutton* (*Ponsford & Devenish, Tivendale & Munday*); *R. G. Micklethwait*, Q.C., and *C. N. Pitchford* (*Herbert Smith & Co.*); *Gilbert Paull*, Q.C., *Montague Berryman*, Q.C., and *Humfrey Edmunds* (*Vernon Lawrence*, Newport, Mon.); *Gerald Gardiner*, Q.C., and *Patrick O'Connor* (*Rhys Roberts & Co.*, for *Myer, Cohen & Co.*, Cardiff).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 33

INCOME TAX: PROFITS TAX: VALUE PAYMENTS MADE TO PROPERTY-DEALING COMPANY: WHETHER CHARGEABLE

London Investment and Mortgage Co., Ltd. *v.* Inland Revenue Commissioners; Same *v.* F. N. Worthington (Inspector of Taxes)

Lord Evershed, M.R., Birkett and Romer, L.JJ.
6th December, 1956

Appeals from Upjohn, J. ([1956] 1 W.L.R. 858; 100 Sol. J. 510).

A company which carried on the trade of property dealing received value payments under the provisions of the War Damage Act, 1943, in respect of some of its properties which had been damaged and destroyed by enemy action. The Special Commissioners held that, in computing the balance of profits for taxation purposes, the company should in general include value payments as receipts of its trade, but that where a property had been, was being, or was intended to be, repaired or rebuilt, sums received in respect of such payments should not be included as receipts, but should be deducted from the amount expended on rebuilding. The company appealed against the general conclusions of the commissioners; the Crown cross-appealed against the conclusions regarding the properties intended (etc.) to be rebuilt. Upjohn, J., allowed the company's appeal from the decision of the Special Commissioners and dismissed the Crown's cross-appeals. He held that the value payments were not a trading receipt, as they constituted a receipt by the taxpayer, not as a part of his trading operation, but because he was compelled under the war-damage scheme to make payments with the corresponding right of receiving the benefit in his capacity, not as a trader, but as an owner of land. The Crown appealed.

LORD EVERSHED, M.R., said that the four cases under appeal raised a single point for consideration, namely, where a company carrying on the trade or business of property dealing received from the War Damage Commission a value payment in respect of a property held by the company in the course of its trade, was that value payment to be treated as part of the company's annual profits or gains arising to it from its business within the meaning of Sched. D, now incorporated into s. 122 of the Income Tax Act, 1952? There was also raised in each case a question as regards profits tax, but the answer to the question as it was related to income tax necessarily involved also the answer as it related to profits tax. He (his lordship) found the question one of very great difficulty. One reason was that on either view of it the conclusion inevitably produced, or was capable of producing, anomalies. But it was to be observed, as it had an important bearing on the proper result to be reached in this case, that the court was concerned here with a company whose trade or business was that of property dealing, so that property, be it freehold or leasehold property, would be the circulating capital or the stock-in-trade of the company's trading operations. His lordship referred to *J. Gliksten & Son, Ltd.* v. *Green* [1929] A.C. 381, and *Newcastle Breweries, Ltd.* v. *Inland Revenue Commissioners* (1927), 43 T.L.R. 476, and observed that, in his opinion, the effects of those two cases supported the view which had been fundamental to the Crown's argument, namely, that where a trader was dealing in any kind of commodity and where for any reason part of that stock-in-trade, part of the commodity, disappeared or was compulsorily taken or was lost, and was replaced by a sum of cash by way of price or compensation, then, *prima facie*, that sum of cash would be, and should be, taken into the account of profits and gains arising or accruing to the trader from his trade. His lordship referred to s. 66 of the War Damage Act, 1943, and s. 28 of the War Damage (Public Utility Undertakings, etc.) Act, 1949, and said that counsel for the company had contended that it was impossible to read s. 28 save on the assumption that Parliament was treating throughout all the payments made either into or out of the war damage fund as capital payments from whomsoever or into whosoever's hands they came. That was a forcible argument, but the difficulty was that Parliament had not said so, and in his (his lordship's) judgment the court was unable to do so by way of implication. For those reasons the appeal must be allowed.

BIRKETT and ROMER, L.JJ., delivered concurring judgments. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *Geoffrey Cross*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *John Senter*, Q.C., and *Desmond Miller* (*R. C. Bartlett & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 116

FACTORY: LIABILITY OF OCCUPIER FOR BREACH OF ELECTRICITY REGULATIONS: LIABILITY OF CONTRACTOR TO INDEMNIFY OWNER

Murfin *v.* United Steel Companies, Ltd.; Power Gas Corporation, Ltd., third party

Singleton, Jenkins and Parker, L.JJ. 6th December, 1956

Appeals from Finnemore, J.

The Electricity (Factories Acts) Regulations, 1908, provide by reg. 15 that bare conductors on a switchboard, if not located in an area set apart, shall be suitably fenced, and none but authorised persons shall have access to such an area. By reg. 24: "Portable insulating . . . screens . . . or other suitable means shall be provided and used when necessary adequately to prevent danger. . . ." While work was being carried out by contractors and sub-contractors at the defendants' works the plaintiff's husband, an experienced foreman electrician employed by sub-contractors, was electrocuted while replacing a burned-out unit in a switchboard panel in the contactor room which was set apart to comply with reg. 15. Number 3 panel, on which the deceased was working, was isolated, but Nos. 2 and 4 on either side of it were live and not screened. The deceased must in some way have come into contact with No. 4 panel. The plaintiff claimed damages from the defendants for negligence and breach of statutory duty. The defendants denied liability, and claimed in the event of there being a breach of statutory duty an indemnity by the third party under a contract which provided that "the contractor shall indemnify the company against every claim . . . under any statute or at common law for . . . death . . . arising out of . . . the carrying out of the contractor's work and from any cause other than the negligence of the company. . . ." The judge did not find the defendants guilty of negligence, but found that they were in breach of reg. 24 in failing to screen the live panels, and that they were entitled

to be indemnified. Both the defendants and the third party appealed, the latter contending that the defendants, being in breach of statutory duty, were guilty of negligence and not entitled to recover.

SINGLETON, L.J., said that, on the defendants' appeal, it was clear that screens should have been used "adequately to prevent danger." It was idle to say that reg. 24 did not apply because the room was a place set apart under reg. 15, the deceased was an experienced man, and screens were not necessary or usual. Regulation 24 was a general or sweeping-up provision to avoid danger and to prevent just such an accident as had happened in the present case. The appeal must be dismissed. On the third party's appeal, the defendants contended that as the death was caused by a breach of statutory duty without negligence on their part, they were entitled to be indemnified. The third party contended that "negligence" in the contract included a breach of statutory duty. In some cases "negligence" was wide enough to cover a breach of statutory duty (see *Lochgelly Iron & Coal Co., Ltd.* v. *M'Mullan* [1934] A.C. 1) but they were usually treated as separate causes of action, as in the present case; appeals often succeeded on one issue and failed on the other. Looking at the wording of the indemnity clause, it should be treated as indemnifying the company so long as there was no negligence, in the ordinary sense of the word, on their part. That appeal should also be dismissed.

JENKINS and PARKER, L.JJ., agreed. Appeals dismissed.

APPEARANCES: *G. R. Swanwick*, Q.C., and *Mrs. E. K. Lane* (*Corbin, Greener & Cook*, for *Raworth, Lomas-Walker & Co.*, Harrogate); *H. I. Nelson*, Q.C., and *B. Caulfield* (*Carpenters*, for *G. Keogh & Co.*, Nottingham); *F. Atkinson*, Q.C., and *A. E. James* (*Rowley, Ashworth & Co.*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 104**

LANDLORD AND TENANT ACT, 1954: RECONSTRUCT: MEANING: CHANGE OF IDENTITY

Percy E. Cadle & Co., Ltd. *v.* Jacmarch Properties, Ltd.

Denning and Hodson, L.JJ., and Ormerod, J.
6th December, 1956

Appeal from Pontypridd County Court.

A property company purchased business premises consisting of shops on two floors and a storage basement connected only by outside steps. They at once served notice to terminate the tenancy of the tenant who occupied the ground-floor shops and basement. The notice stated that the landlords would oppose the grant of a new tenancy under the Landlord and Tenant Act, 1954, on the ground specified in s. 30 (1) (*f*), namely, that they intended to reconstruct the premises comprised in the holding or a substantial part thereof. Section 30 provides: "(1) The grounds on which a landlord may oppose an application under subs. (1) of s. 24 of this Act are such of the following grounds as may be stated in the landlord's notice . . . (*f*) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding." On the hearing of the tenant's application for a new tenancy the landlords proved that they intended to change the identity and character of the premises as a whole by converting the three floors into one self-contained shop unit, building inside stairs and carrying out other structural repairs and improvements on that part of the premises comprised in the tenant's holding. The county court judge held that the amount of work proposed fell short of reconstruction within para. (*f*) and granted a new tenancy to the tenant. The landlords appealed.

DENNING, L.J., said that the only premises with which the court was here concerned were the ground floor and the basement, and it was only if the landlord "intended to reconstruct" those premises that he could resist a new tenancy. For the landlords it had been said that when one had premises being thrown into a larger whole so that they lost their identity in the larger whole that was a "reconstruction," and the court had been referred to the cases under the Rent Acts regarding change of identity. It had been conceded that some work would have to be done, but it was said that the amount did not matter very much so long as there was a change of identity. In his lordship's judgment, the word "reconstruct" in this section was not satisfied by a change of identity; there must be substantial work of construction. The word "reconstruct" here was best expressed by the synonym "rebuild." There must be in effect a rebuilding of the premises or of "a substantial part" of them. Whether there was work of that character and to such a degree was primarily a matter for the county court judge. In this case the county court judge thought that there was not a "reconstruction." His lordship agreed, and would dismiss the appeal.

HODSON, L.J., concurring, said that the physical meaning of the word "reconstruct" was the meaning which Parliament intended, and it was not to be distorted by paying attention to the metaphysical aspect of change of identity and change of character.

ORMEROD, J., also concurring, said that "reconstruction" must mean in the first place a substantial interference with the structure of the premises and then a rebuilding, in probably a different form, of such part of the premises as had been demolished by reason of the interference with the structure. Appeal dismissed.

APPEARANCES: *L. A. Blundell* (*Harris, Chetham & Co.*); *W. Norman Francis* (*Kinch and Richardson*, for *Allen Pratt and Geldard*, Cardiff).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 80**

NEGLIGENCE: ESCAPE OF FIRE: LIABILITY OF HOUSEHOLDER FOR NEGLIGENCE OF INDEPENDENT CONTRACTORS' WORKMEN

Balfour *v.* Barty-King and Another; Hyder & Sons (Builders), Ltd., third parties

Lord Goddard, C.J., Morris, L.J., and Vaisey, J.
14th December, 1956

Appeal from Havers, J. ([1956] 1 W.L.R. 779; 100 SOL. J. 472).

The defendants were the owners and occupiers of a dwelling-house which was contiguous to that of the plaintiff. On 29th January, 1954, the second defendant employed independent contractors to thaw frozen pipes in her loft, which contained a large quantity of combustible material. The independent contractors applied a blow lamp to the pipes which were, in parts, lagged with felt; the felt caught fire and the fire spread rapidly throughout the loft and to the plaintiff's house. The judge found that the fire was caused by the negligence of the independent contractors because, although the use of a blow lamp was one of the normal methods of thawing pipes, it was negligent to use one in proximity to inflammable material. He gave judgment for the plaintiff against the defendants, and for the defendants against the contractors as third parties. The contractors went into liquidation. The defendants appealed.

LORD GODDARD, C.J., delivering the judgment of the court, said that the question was whether the defendants were responsible for the spread of fire from their premises caused by the negligence of independent contractors. In the early cases, *Beaulieu* v. *Finglam* (1401), Y.B. 2 Hy. IV, f. 18, pl. 6, and *Turberville* v. *Stamp* (1698), 1 Ld. Raym. 164, there was some confusion between an absolute duty under the common law and negligence. It came to be thought that there should be no liability for fire damage not caused by negligence, so in 1707 6 Anne c. 31 was enacted providing that no action should lie against any person in whose house a fire should accidentally begin; this was re-enacted in the Fire Prevention (Metropolis) Act, 1774, which had been held to extend to the whole country. At the present day, it could safely be said that a person in whose house a fire caused by negligence spread to that of his neighbour was liable unless it was caused by a stranger; an expression which did not include a servant or guest. A trespasser would be a stranger, but it was difficult to see why a man should be liable for the negligence of his guest but not for that of a contractor invited to do work on the premises. Recently in *Perry* v. *Kendricks Transport, Ltd.* [1956] 1 W.L.R. 85; 100 SOL. J. 52, Parker, L.J., referred to a stranger as a person over whom the defendant had no control; the test of an independent contractor was that he carried out his work in his own way, but the lord justice was not using the word in that sense. The defendants had control over the contractor in that they chose him, invited him to their premises

to work, and could have told him to go at any time. They were liable to the plaintiff, and the appeal must be dismissed. Appeal dismissed.

APPEARANCES: *Melford Stevenson*, Q.C., and *G. H. Crispin* (*Boodle, Hatfield & Co.*); *J. Thompson*, Q.C., and *B. Caulfield* (*Barlow, Lyde & Gilbert*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 84

Chancery Division

CHARITY: TRUST FOR PUBLIC INSTRUCTION IN FORMS OF GOVERNMENT: TRUSTEES TO BE MEMBERS OF POLITICAL SOCIETY

***In re* The Trusts of the Arthur McDougald Fund; Thompson *v.* Fitzgerald**

Upjohn, J. 1st November, 1956

Adjourned summons.

A testator bequeathed a sum of money to a political society to be held at the disposal of the governing body thereof. The executive committee decided that a permanent endowment fund should be created to be devoted solely to charitable purposes and a resolution was duly passed, with the result that on 6th October, 1948, a trust deed was executed, which, by cll. 2 and 3, provided as follows: "(2) The trustees shall hold the fund together with all income arising therefrom upon trust to pay and apply such income from time to time for such charitable purposes including grants to persons or institutions to be employed for such charitable purposes as in the absolute discretion and opinion of the trustees (i) shall best advance and encourage education or other charitable purposes beneficial to the community in connection with the art or science of government or other branches of political or economic science; (ii) shall most tend to encourage the study of methods of government or civil commercial or social organisations. (3) Not so as to limit the generality of the provisions of cl. (2) hereof the trustees may apply the whole or any part of the income of the fund for any or all the purposes hereinafter declared so far as the same may lawfully be applied for charitable purposes, namely: (*a*) the advancement of learning in matters affecting forms of government and representative assemblies whether or not such forms of government and representative assemblies shall be actual or theoretical and whether or not the same shall exist or have existed; (*b*) the encouragement of interest in and knowledge of the science of government and civics." The trust deed later provided that none but members of the society should be trustees. A summons was taken out to ascertain whether the fund was held on valid charitable trusts.

UPJOHN, J., said that the object of the society was to secure the adoption of proportional representation at elections; that might be laudable but it was not charitable. The main attack on the validity of the deed was that its dominant purpose was not to create a charitable trust but to further the political objects of the society, it being recognised that since the passing of the Charitable Trusts Validation Act, 1954, it would be of no avail to say merely that some of the trusts were not charitable. It was said that the use of vague and uncertain language, such as "interest in and knowledge of the science of government and civics," coupled with the power of the society over the personnel of the trustees, indicated a political object. Further, the mere use of phrases such as "charitable purposes" or "educational purposes" was not conclusive; in *Bonar Law Memorial Trust* v. *Commissioners of Inland Revenue* (1933), 49 T.L.R. 220, and *In re Hopkinson* (1949), 65 T.L.R. 108, so-called "educational" trusts were held bad because in truth they were set up to further political party aims. But in the present case the objects of cll. 2 and 3, by themselves, appeared to be charitable; and when the operative trust was charitable, the fact that the trustees were to be persons of a certain persuasion did not affect the matter (see *Dunne* v. *Byrne* [1912] A.C. 407). There would be a declaration that the trusts were charitable. Declaration accordingly.

APPEARANCES: *J. N. Gray*, Q.C., and *E. W. H. Christie* (*T. S. Stallabrass*); *G. H. Newsom*, Q.C., and *G. B. H. Dillon* (*Pollard, Stallabrass, Beuselinck & Martin*); *D. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 81

INCOME TAX: VOLUNTARY PAYMENT: TRANSFER OF SHARES TO COMPLY WITH WISHES OF DECEASED SHAREHOLDER

Bridges (Inspector of Taxes) *v.* Hewitt; Same *v.* Bearsley

Danckwerts, J. 8th November, 1956

Appeals from the Commissioners for the Special Purposes of the Income Tax Acts.

The business of a public company was built up by the work of two of the directors, the secretary, and the managing director, but the majority of the shares were held by *F. H.*, who died in 1936. The two directors had understood that *F. H.* would leave each of them a reasonable number of shares by his will; *F. H.* did not do this but left all his shares in the company in trust for his wife for life and thereafter to his two sons. The sons felt under a duty to transfer a number of shares to the directors. Nothing was said about the transfers being a reward or remuneration for past services, but deeds of transfer of 8,000 shares to each director were executed in 1945, stating in each case that the transfer was "In consideration of the covenantee [the director] continuing his present engagement" with the company "until the expiry of four years from the date hereof." The transfers were intended to take effect after the death of the widow of *F. H.*, but the shares were in fact transferred to the directors in 1953. The inspector of taxes claimed that the shares were taxable under Sched. E for the year 1953–54 as profits of their office or employment.

DANCKWERTS, J., said that the cases seemed to establish: (1) That a sum might be assessable as a profit even though it appeared to be an unusually large one in comparison with the recipient's normal income. (2) That it might be assessable though it was received in the form not of cash, but of money's worth, such as shares. (3) That it might be assessable though it was received from persons who were not the employers of the recipient or even persons having any actual financial interest in the services of the recipient. But (4) it depended on the circumstances, and not every sum received from another person during the period of the recipient's service was assessable as income and a profit of his office, even though it came from the recipient's employer, and this must be more obviously so if the amount was received from a person who was not the employer. None of the cases which had been cited were conclusive. It seemed to him that the expectation of receiving the bequests of shares in the will of *F. H.* was an expectation of receiving *gifts* of shares; the son approached by one of the directors thought that his father had failed in his generosity as a testator. But the transaction was changed; it was conceived desirable to introduce the element of consideration in order to make the promises legally enforceable, and the consideration which was selected was a promise by the directors to continue serving in their offices with the company for four years from the date of the deeds of covenant. In this way, the acquisition of the shares under the terms of the deeds irretrievably was linked up with the services of the taxpayers as officers of the company. It was impossible to deny that under the obligations created by the deed the shares were received by the taxpayers by reason of their offices and, therefore, as profits of these offices.

The appeals accordingly succeeded.

APPEARANCES: *F. N. Bucher*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *N. E. Mustoe*, Q.C., *and H. H. Monroe* (*Lightbounds, Jones & Crean*, for *Owen, Dawson and Wynn-Evans*, Liverpool).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 59

PRACTICE AND PROCEDURE: TRANSFER OF PROCEEDINGS: *LOCUS STANDI* TO MOVE TO DISCHARGE ORDER OF TRANSFER

***In re* Capelovitch, deceased; Sandelson *v.* Capelovitch and Another**

Upjohn, J. 4th December, 1956

Motion.

An order for the administration of the estate of a testator was made in the Chancery Division in July, 1952. An action against the testator's executors as executors and personally was started in the Queen's Bench Division in June, 1953. On 19th November, 1956, just before the action was due to come on for trial, one of the executors obtained an order transferring the action to the Chancery Division. The plaintiff in that action, who was not a party to the administration proceedings, and who had not been

served with the administration order, moved in the administration proceedings to discharge the order for transfer.

UPJOHN, J., said that the sole question was whether the plaintiff, who had not been served with the notice of the order of administration, had any *locus standi* to move this court to discharge the order transferring the action. Orders transferring actions where an administration order had been made were commonly made *ex parte*, but there might be circumstances in which it was not convenient to transfer the action. Counsel had drawn his attention to the authorities: *In re United Kingdom Electric Telegraph Co.* (1881), 29 W.R. 332; *Field* v. *Field* [1877], W.N. 98; and *In re Pimm* [1916] W.N. 202, and it was plain that the court did entertain applications such as this, and he proposed to hold that the applicant had a *locus standi* to make this application. Order accordingly.

APPEARANCES: *B. J. H. Clauson* (*Lieberman, Leigh & Co.*, for *Saffman & Co.*, Leeds); *A. C. Sparrow* (*Waterhouse & Co.*); *W. A. Bagnall* (*Ward, Bowie & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 102**

Queen's Bench Division

RENT RESTRICTION: CLAIM OF SUB-TENANTS TO PROTECTION OF ACTS AFTER TERMINATION OF HEAD LEASE: HOUSING REPAIRS AND RENTS ACT, 1954, S. 41

Cadogan and Another *v.* Henthorne and Others

Hallett, J. 8th November, 1956

Action.

The Housing Repairs and Rents Act, 1954, provides by s. 41: "Where a dwelling-house to which the Act of 1920 applies (hereinafter referred to as 'the sub-let part') forms part of premises, not being such a dwelling-house, which has been let as a whole on a superior letting, then from the coming to an end of the superior letting the operation of the Rent Acts in relation to the sub-let part shall be the same as if in lieu of the superior letting there had been separate lettings of the sub-let part and the remainder of the premises, for the like purposes as under the superior letting, and at rents equal to the just proportion of the rent under the superior letting." The lessee of premises of which the rateable value was £101 and for which he paid a rent of £16 a year, sub-let the basement and ground floor to the defendants at a rent of £150 a year. The head lease expired on 24th December, 1954. In an action by the landlords for possession, the sub-lessees claimed that they were protected in their possession of the basement and ground floor by the Rent Acts. Although prior to 1954 the sub-lessees' claim to protection by virtue of s. 15 (3) of the Act of 1920 might have been defeated because the rateable value of the whole of the premises let to the head-lessee exceeded £100 and he paid a rent which was less than two-thirds of the rateable value (s. 12 (7) of the Act of 1920), nevertheless the sub-lessees contended that they were protected by s. 15 (3) because the exceptions which would otherwise have taken them outside the ambit of the Acts had been eliminated by s. 41 of the Housing Repairs and Rents Act, 1954, and s. 15 (1) of the Landlord and Tenant Act, 1954. It was agreed by both parties that the effect of s. 15 (1) was to provide that a sub-lessee was not to be deprived of the benefit of the Rent Acts by reason only that the rent payable by the head-lessee was less than two-thirds of the rateable value.

HALLETT, J., said that the real contest in the case turned on the construction of s. 41. The landlords contended that the notional separate lettings of the sub-let part and of the remainder of the premises were notional separate lettings of the sub-let part to the sub-lessees and of the remainder to the head-lessee; the defendants contended that the notional separate lettings were lettings of the sub-let part and of the remainder to the original tenant of the whole. It was conceded that s. 15 (3) of the Act of 1920 would not by itself be sufficient to protect the defendants, and that the effect of the low rent was destroyed by s. 15 of the Landlord and Tenant Act, 1954. The question whether the other ground, the high rateable value, deprived the defendants of the protection of s. 15 (3) depended on the true construction of s. 41. The construction for which the defendants contended was the correct one, as the other construction did not fit in well with the wording of the section. It followed that the defendants were protected by s. 15 (3). Judgment for the defendants.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *P. Medd* (*Lee & Pembertons*); *L. A. Blundell* (*William Charles Crocker*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1**

INSURANCE: PROFESSIONAL NEGLIGENCE: "QUEEN'S COUNSEL" CLAUSE: MIXED CLAIM INVOLVING NEGLIGENCE AND DISHONESTY

West Wake Price & Co. *v.* Ching

Devlin, J. 14th November, 1956

Action.

The plaintiffs, a firm of accountants, took out a policy of insurance to cover themselves against loss for any claim which might be made against them in respect of any act of neglect, default or error arising out of the conduct of their business as accountants. The policy, in addition to the main indemnity, contained a "Queen's Counsel clause" whereby the underwriters agreed to pay any such claim without requiring the plaintiffs to dispute it, unless a leading counsel (to be mutually agreed upon between the parties) advised that the claim could be successfully contested and the plaintiffs consented to it being contested, their consent not to be unreasonably withheld. A clerk employed by the plaintiff firm received from two of the clients certain sums of money which ultimately could not be accounted for; and, subsequently, the clients issued writs against the plaintiffs. In their statements of claim three causes of action were alleged: first, damages for negligence or breach of duty as accountants; second, money had and received; and, third, moneys converted by the plaintiffs to their own use. A request for indemnity was refused by the underwriters and the plaintiffs sought a declaration that the claims formulated in the writs issued against them were claims based on negligence, and in consequence brought into operation the Queen's Counsel clause under which the underwriters were bound to indemnify them.

DEVLIN, J., said that it was admitted that on the authorities claims in respect of "any act of neglect, default or error" did not extend to acts of dishonesty, or claims for money had and received unless arising from neglect, etc. The pleadings of the claimants against the plaintiffs carefully avoided specific allegations of fraud, and negligence was pleaded as the main claim, but looking at the substance of the matter the claim was based primarily on the fraud of the clerk. The whole object of the policy was to indemnify the plaintiffs against loss by negligence, not loss by fraud; the plaintiffs were anxious to prevent litigation involving damaging publicity arising out of charges of professional negligence, and the Queen's Counsel clause was designed to meet that requirement. The case turned on whether the event which brought the clause into operation, i.e., a claim based on negligence, had arisen. The plaintiffs asserted that it had. The defendants had put up certain arguments which really made nonsense of the clause, the object of which was to protect the plaintiffs from objectionable litigation, whether successful or not. But they had put a further argument which raised the real point in the case, whether there was one or more than one "claim" within the meaning of the policy. The plaintiffs said that "claim" meant cause of action; there was such a "claim" for negligence, so that the Queen's Counsel clause came into operation, it being immaterial that there were other "claims"; the defendants said that "claim" meant the amount claimed, and that there was only one such amount, though supported by three causes of action. Difficulties arose on either interpretation, but the most formidable difficulty was that the defendants, if the plaintiffs were right, could not discharge the liability in negligence without also discharging the liability in fraud, which was not within the policy. That indicated that "claim" should bear its primary and ordinary meaning, a demand for money, irrespective of the ground on which the demand arose. If there was only one demand, there was only one claim, irrespective of the number of grounds on which it was based. The question was, whether the mixed claim in question was a claim in negligence within the meaning of the policy. On its true construction, the character of the claim must be unmixed negligence, and not a mixture of causes of action. The plaintiffs had failed to establish that a claim within the meaning of the policy had arisen against them, so that the Queen's Counsel clause had not come into operation. Judgment for the defendant.

APPEARANCES: *G. Paull*, Q.C., and *R. J. Parker* (*Ward, Bowie & Co.*); *Neil Lawson*, Q.C., and *W. G. Wingate* (*William Charles Crocker*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 45**

Probate, Divorce and Admiralty Division

SHIPPING: LIMITATION OF LIABILITY: TOWAGE: WHETHER PARTIES CONTRACTING OUT OF MERCHANT SHIPPING ACT, 1894, s. 503

Alsey Steam Fishing Co., Ltd. *v. Hillman* (Owners) and Others; The *Kirknes*

Willmer, J. 20th November, 1956

Preliminary point of law.

The United Kingdom Standard Towage Conditions were incorporated into a contract under which tug owners contracted to use their tug *Hillman* to tow the plaintiffs' vessel *Kirknes*. Whilst towing the *Kirknes*, the *Hillman* came into collision with her and sank with the loss of the lives of four members of her crew. The tug owners started an action against the plaintiffs claiming damages for negligence and a declaration that under the terms of the towage conditions the plaintiffs had accepted liability regardless of negligence to pay for the damage caused to the tug. The plaintiffs admitted liability, but started proceedings to limit their liability, pursuant to s. 503 of the Merchant Shipping Act, 1894. The United Kingdom Standard Towage Conditions, *inter alia*, provided: "(2) On the employment of a tug, the master and crew thereof become the servants of . . . and are under the control of the hirer or his servants or agents . . . (3) The tug owner shall not, whilst towing, bear or be liable for damage of any description done by or to the tug, or done by or to the hirer's vessel . . . or for loss of the tug or the hirer's vessel, or for any personal injury or loss of life, arising from any cause, including negligence . . . of the tug owner's servants or agents, and the hirer shall pay for all loss or damage and personal injury or loss of life and shall also indemnify the tug owner against all consequences thereof. . . ." The court was asked on a preliminary question to determine whether the plaintiffs were entitled to limit their liability under s. 503 of the Merchant Shipping Act, 1894, with reference to the claims of the tug owners and the life claimants.

WILLMER, J., said that the two claims were, first, for damages in respect of alleged negligent navigation; second, there was a claim that, quite regardless of any question of negligence, the present plaintiffs, by reason of the towage conditions, were under a contractual liability to pay for all loss or damage to the tug occurring in the course of the towage; in other words, it was contended that, as a matter of contract, the present plaintiffs were in the position of insurers of the tug during the time that the towage was being carried on. In so far as the tug owners' claim was a claim for damages in respect of negligent navigation, it was clear that, *prima facie* at any rate, the plaintiffs came within s. 503 of the Merchant Shipping Act, 1894, that was to say, the section conferring the right of limitation. *Prima facie*, therefore, that section would appear to apply directly in so far as the tug owners' claim was a claim for damages. In so far, however, as their claim was a claim under the contract, it appeared to him that wholly different considerations applied. The decision of the House of Lords in *The Stonedale No. 1* [1956] A.C. 1 was directly in point here, and precluded him from holding that s. 503 of the Act applied to the tug owners' claim, in so far as that was based on their contractual rights. He (his lordship) saw no distinction in principle between the statutory right conferred upon the Manchester Ship Canal Company under their private Act and the contractual right which the tug owners in this case obtained by reason of the conditions of their towage contract, that was to say, their contractual right to be paid for all loss or damage, including loss of or damage to the tug, should that event take place during the course of the towage. He had, however, to consider the alternative claim for damages. The tug owners had argued that, even if their claim were to be regarded as a mere claim for damages, nevertheless the effect of the towage conditions would still be such as to abrogate s. 503 of the Merchant Shipping Act. He had also to consider the position of the life claimants, in respect of whom it was conceded that they had, and could only have, a claim for damages. It seemed to him that, on its true construction, the contract in this case was distinguishable from the contract in *The Satanita* [1897] A.C. 59. In so far as the tug owners' claim was a claim based on damages for negligence, he would therefore have held, had it been material to do so, that they had not contracted out of s. 503, but that that section still applied to limit the liability in damages of the tow to the tug. But, for reasons which he had already given, that, so far as the tug owners were concerned, was an academic question; for they were entitled to recover in full on their alternative claim in contract, pursuant to the authority of *The Stonedale No. 1*. The point had, however, been taken on behalf of the life claimants that the tug owners, in making their contract with the plaintiffs, were acting not only for themselves but also as agents for the crew of the tug. It could be inferred from the terms of the contract, however, that the tug owners were contracting as agents for the master and crew of their tug, but that since the claims of the life claimants were for damages only and the terms of the contract were not sufficiently clear to exclude the operation of s. 503 of the Merchant Shipping Act, 1894, the plaintiffs could limit their liability as regards these claims. Judgment for the defendants, the owners of the steam tug *Hillman*. Judgment for the plaintiffs on the claims of the life claimants. Leave to appeal granted.

APPEARANCES: *K. S. Carpmael*, Q.C., and *G. R. A. Darling* (*Middleton, Lewis & Co.*, for *H. S. Bloomer*, Great Grimsby); *Waldo Porges*, Q.C., and *Maurice E. C. Rena* (*Andrew M. Jackson & Co.*); *Derek H. Hene* (*Botterell & Roche*, for *Brown & Son*, Great Grimsby).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 20

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Act of Sederunt (Valuation Appeal Rules Amendment) 1956. (S.I. 1956 No. 1994 (S.96).)

Administration of Justice Act, 1956, (Part V), Commencement Order, 1956. (S.I. 1956 No. 2099 (C. 21) (S. 101).)

Bahrein (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2033.)

British Egg Marketing Scheme (Approval) Order, 1956. (S.I. 1956 No. 2082.) 1s. 8d.

British Guiana (Constitution) (Temporary Provisions) (Amendment) Order in Council, 1956. (S.I. 1956 No. 2030.) 8d.

Central Institutions (Recognition) (Scotland) Regulations, 1956. (S.I. 1956 No. 2053 (S.99).) 5d.

Clean Air Act 1956 (Appointed Day) (Scotland) Order, 1956. (S.I. 1956 No. 2026 (C.20) (S.97).) 5d.

Cumberland River Board (Fisheries) Order, 1956. (S.I. 1956 No. 2083.) 5d.

Driffield Water Order, 1956. (S.I. 1956 No. 1993.) 5d.

Exchange Control (Specified Currency) Order, 1956. (S.I. 1956 No. 2088.) 5d.

Execution of Sentences of Death (Air Force) Regulations, 1956. (S.I. 1956 No. 2054.) 8d.

Fees for Certificates of Arrest and Surrender of Deserters and Absentees (Air Force) Regulations, 1956. (S.I. 1956 No. 2051.)

Fees for Certificates of Arrest and Surrender of Deserters and Absentees (Army) Regulations, 1956. (S.I. 1956 No. 2019.)

Housing Subsidies Order, 1956. (S.I. 1956 No. 2015.) 5d.

Isle of Man (Customs) (No. 2) Order, 1956. (S.I. 1956 No. 2039.) 5d.

Kuwait (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2034.)

London Traffic (Prescribed Routes) (Finchley) Regulations, 1956. (S.I. 1956 No. 2002).

London Traffic (Prescribed Routes) (St. Pancras) (No. 3) Regulations, 1956. (S.I. 1956 No. 2004.) 5d.

London Traffic (Prescribed Routes) (Surbiton and Kingston-upon-Thames) Regulations, 1956. (S.I. 1956 No. 2003.)

Merchant Shipping (Safety Convention Countries) (Various) (No. 3) Order, 1956. (S.I. 1956 No. 2040.)

Molasses (Rates of Surcharge Repayments) Order, 1956. (S.I. 1956 No. 2059.) 5d.

National Health Service (General Medical and Pharmaceutical Services) (Scotland) Amendment (No. 3) Regulations, 1956. (S.I. 1956 No. 2089 (S.100).) 5d.

Pensions (Increase) Act (Extension) Order, 1956. (S.I. 1956 No. 2046.) 5d.
Police (Discipline) (Scotland) Regulations, 1956. (S.I. 1956 No. 1998 (S.94).) 5d.
Police (Local Enactments) (Scotland) Order, 1956. (S.I. 1956 No. 1996 (S.92).) 5d.
Police (Scotland) Act, 1956 (Commencement) Order, 1956. (S.I. 1956 No. 1995 (C.18) (S.91).)
Police (Scotland) Amendment (No. 3) Regulations, 1956. (S.I. 1956 No. 1983 (S.90).)
Police (Scotland) Regulations, 1956. (S.I. 1956 No. 1999 (S.95).) 1s. 8d.
Police (Special Constables) (Scotland) Regulations, 1956. (S.I. 1956 No. 1997 (S.93).) 5d.
Police Pensions (No. 3) Regulations, 1956. (S.I. 1956 No. 2077.) 8d.
Qatar (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2035.)
Retention of Mains and Pipes under Highways (Staffordshire) (No. 1) Order, 1956. (S.I. 1956 No. 2061.) 5d.
Sheriff's Fees (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2081 (L.24).)
Smoke Control Areas (Authorised Fuels) (Scotland) Regulations, 1956. (S.I. 1956 No. 2027 (S. 98).)
Stopping up of Highways (Bootle) (No. 3) Order, 1956. (S.I. 1956 No. 2057.) 5d.
Stopping up of Highways (Caernarvonshire) (No. 2) Order, 1956. (S.I. 1956 No. 2062.) 5d.
Stopping up of Highways (Cornwall) (No. 3) Order, 1956. (S.I. 1956 No. 2070.) 5d.
Stopping up of Highways (Dorset) (No. 3) Order, 1956. (S.I. 1956. No. 2063.) 5d.
Stopping up of Highways (Gloucestershire) (No. 21) Order, 1956. (S.I. 1956 No. 2068.) 5d.
Stopping up of Highways (Hertfordshire) (No. 12) Order, 1956. (S.I. 1956 No. 2047.) 5d.
Stopping up of Highways (Leicestershire) (No. 15) Order, 1956. (S.I. 1956 No. 2012.) 5d.
Stopping up of Highways (London) (No. 52) Order, 1956. (S.I. 1956 No. 2064.) 5d.
Stopping up of Highways (London) (No. 53) Order, 1956. (S.I. 1956 No. 2071.) 5d.
Stopping up of Highways (London) (No. 54) Order, 1956. (S.I. 1956 No. 2072.) 5d.
Stopping up of Highways (London) (No. 55) Order, 1956. (S.I. 1956 No. 2065.) 5d.
Stopping up of Highways (Nottinghamshire) (No. 9) Order, 1956. (S.I. 1956 No. 2066.) 5d.
Stopping up of Highways (Nottinghamshire) (No. 12) Order, 1956. (S.I. 1956 No. 2013.) 5d.
Stopping up of Highways (Surrey) (No. 10) Order, 1956. (S.I. 1956 No. 2069.) 5d.
Stopping up of Highways (Surrey) (No. 11) Order, 1956. (S.I. 1956 No. 2067.) 5d.
Stopping up of Highways (Warwickshire) (No. 17) Order, 1956. (S.I. 1956 No. 2073.) 5d.
Stopping up of Highways (West Sussex) (No. 3) Order, 1956. (S.I. 1956 No. 2029.) 5d.
Sugar and Molasses (Rates of Surcharge) Order, 1956. (S.I. 1956 No. 2058.) 5d.
Trucial States (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2036.)
Visiting Forces (Application of Law) Order, 1956. (S.I. 1956 No. 2042.) 7d.
Visiting Forces (Designation) Order, 1956. (S.I. 1956 No. 2041.)
Visiting Forces (Military Courts-Martial) (Amendment) Order, 1956. (S.I. 1956 No. 2043.) 5d.
Visiting Forces (Royal New Zealand Air Force) (Amendment) Order, 1956. (S.I. 1956 No. 2044.) 5d.
Visiting Forces (Union of South Africa Defence Forces) (Amendment) Order, 1956. (S.I. 1956 No. 2045.) 5d.
Wages Regulation (Made-up Textiles) Order, 1956. (S.I. 1956 No. 2060.) 7d.
Whaling Industry (Ship) (Amendment) Regulations, 1956. (S.I. 1956 No. 2084.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NEW YEAR LEGAL HONOURS

PRIVY COUNCILLORS

Sir HARRY BRAUSTYN HYLTON HYLTON-FOSTER, Q.C., M.P., Solicitor-General. Called by the Inner Temple, 1928, and took silk 1947.

Sir ROBERT CLARKSON TREDGOLD, Chief Justice, Federal Supreme Court, Federation of Rhodesia and Nyasaland. Called by the Inner Temple, 1923.

KNIGHTS BACHELOR

ADETOKUNBO ADEGBOYEGA ADEMOLA, Esq., Chief Justice, Western Region, Nigeria. Called by the Middle Temple, 1953.

ALFRED JOHN AINLEY, Esq., M.C., Chief Justice, Eastern Region, Nigeria. Called by Gray's Inn, 1921.

LEONARD COURTNEY HANNAYS, Esq., Q.C. For public services in Trinidad.

BERTRAM LONG, Esq., Senior Registrar, Principal Probate Registry. Called by the Inner Temple, 1912.

BASIL EDWARD NIELD, Esq., Q.C. Called by the Inner Temple, 1925, and took silk 1945.

ARCHIBALD SAFFORD, Esq., Q.C., Deputy Commissioner under the National Insurance Acts, Ministry of Pensions and National Insurance. Called by the Middle Temple, 1913, and took silk 1946.

The Honourable JOSEPH STANTON, Second Senior Puisne Judge of the Supreme Court, New Zealand.

ERNEST HILLAS WILLIAMS, Esq., Chief Justice, Sarawak, Brunei and North Borneo. Called by the Inner Temple, 1935.

ORDER OF THE BATH

C.B.

RICHARD LYONS ALERS HANKEY, Esq., Principal Assistant Solicitor, Office of Her Majesty's Procurator-General and Treasury Solicitor. Called by Middle Temple, 1929.

GERALD RICHARD PALING, Esq., C.B.E., Deputy Director of Public Prosecutions. Admitted 1918.

ORDER OF ST. MICHAEL AND ST. GEORGE

C.M.G.

The Honourable THOMAS HUGH WILLIAM BEADLE, O.B.E., Judge of the High Court, and formerly a Minister, in Southern Rhodesia.

HERBERT EDGAR EVANS, Esq., Solicitor-General, New Zealand.

ERIC NEWTON GRIFFITH JONES, Esq., Q.C., Attorney-General and Minister for Legal Affairs, Kenya.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Sir JAMES HENLEY COUSSEY, President, West African Court of Appeal. Called by the Middle Temple, 1913.

The Honourable RICHARD KENNETH GREEN, Senior Puisne Judge of the Supreme Court, State of Tasmania.

The Honourable WILLIAM FRANCIS LANGER OWEN, Judge of the Supreme Court of New South Wales.

C.B.E.

ROY LORENTZ DANIELL, Esq., Charity Commissioner. Called by the Inner Temple, 1927.

THOMAS HENRY EVANS, Esq., Clerk of the Staffordshire County Council. Admitted 1930.

BERNARD JOHN BYCROFT EZARD, Esq., Assistant Solicitor, Ministry of Labour and National Service. Called by the Middle Temple, 1922.

FRANK HESKETH, Esq., Assistant Solicitor, General Post Office. Admitted 1922.

HENRY POWNALL, Esq., District Registrar, Manchester High Court Registry.

EDGAR CARMICHAEL ROBBINS, Esq., Solicitor, British Broadcasting Corporation. Admitted 1933.

JOHN VEYSIE MONTGOMERY SHIELDS, Esq., O.B.E., Q.C., Attorney-General, Aden.

ARTHUR CLEMENT THOMPSON, Esq., M.C., Attorney-General for Basutoland, the Bechuanaland Protectorate and Swaziland.

O.B.E.

ERNEST LYNDON FAIRWEATHER, Esq., Chief Examiner, Estate Duty Office, Board of Inland Revenue.

GEORGE NAJEM HOURY, Esq., Q.C. Called by Gray's Inn, 1922, and took silk in Tanganyika.

MEHMED NEDJATI MUNIR, Esq., Solicitor-General, Cyprus. Called by Gray's Inn, 1946.

KENNETH PECK, Esq., J.P., Chairman, Southport National Insurance Appeal Tribunal. Admitted 1914.

Professor ARTHUR PHILLIPS, J.P., Lecturer in Colonial Law, London School of Economics. Called by the Middle Temple, 1931.

REGINALD FREDERICK CECIL ROACH, Esq., M.B.E., Registrar, Lands Tribunal.

M.B.E.

GREGORY MUTHIAH PILLAI, Esq., lately Legal Assistant, Tanganyika. Called by Gray's Inn, 1948.

NOTES AND NEWS

Honours and Appointments

Mr. NORMAN JOHN LEE BRODRICK has been appointed Recorder of the Borough of Penzance.

Mr. A. T. CHEEK has been appointed Official Receiver in the Companies (Winding-up) Department of the Board of Trade.

Mr. HENRY FRANK LUDFORD has been appointed Registrar of the Llandrindod Wells and Knighton County Courts in succession to Mr. A. J. Careless, who has retired.

Mr. GEORGE PRITCHARD, Registrar of the Maidstone County Court and District Registrar in the District Registry of the High Court of Justice in Maidstone, has been appointed, in addition, Registrar of the Cranbrook and Tenterden County Court in succession to Mr. D. Murton-Neale, who has retired.

Mr. JOHN HOWARD TAYLER has been appointed Registrar of the Lincoln and Horncastle, Gainsborough, Grantham, Market Rasen and Caister and Newark County Courts, and District Registrar in the District Registry of the High Court of Justice in Lincoln, in succession to Mr. S. T. Haddelsey, who has retired.

Personal Notes

On 24th December Mr. H. V. Trotman was presented by Mr. John Lodder, on behalf of the staff of Messrs. G. F. Lodder & Sons, of Stratford-on-Avon, with an inscribed silver cigarette box to mark his completion of forty-five years' service with the firm.

Miscellaneous

DEVELOPMENT PLANS

COUNTY COUNCIL OF THE WEST RIDING OF YORKSHIRE DEVELOPMENT PLAN

Proposals for additions to the above development plan were on 20th December, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the undermentioned districts:—

1. *Districts principally affected.*

Boroughs of Goole and Ossett.
Urban Districts of Barnoldswick, Conisbrough, Darton, Dodworth, Earby, Horbury, Ilkley, Mexborough, Otley, Queensbury and Shelf, Rothwell, Sowerby Bridge and Stanley.
Rural District of Thorne.

2. *Districts slightly affected by the above-mentioned proposals.*

Boroughs of Batley, Castleford, Morley and Ossett.
Urban Districts of Aireborough, Elland, Hebden Royd, Mexborough, Normanton, Ripponden and Royston.
Rural Districts of Doncaster, Goole, Penistone, Rotherham, Skipton, Wakefield and Wharfedale.

A certified copy of the proposals has been deposited for public inspection at the County Planning Office, 71 Northgate, Wakefield, and at each of the Area Planning Offices in the County, the addresses of the latter being as follows: County Divisional Offices, Water Street, Skipton; Salisbury Buildings, Albert Street, Harrogate; 35 Standard House, Half Moon Street, Huddersfield; 22 Market Place, Pontefract; The Old Vicarage, Vernon Road, Worsbrough, near Barnsley; County Council and Divisional Offices, Station Road, Doncaster. Certified extracts thereof so far as they relate to the above-mentioned districts have also been deposited for public inspection at the offices of those local authorities principally affected. The maps or extracts of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. each weekday (Saturdays 9 a.m. and 12 noon). Any objection or representation with reference to the proposals may be sent in writing to the secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 28th February, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the County Council of the West Riding of Yorkshire by letter addressed to the clerk of the County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

COUNTY OF BUCKINGHAM DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 4th December, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land within the Borough of Slough. The proposals consist of a map and written statement relating to the designation of 8·47 acres of land situated at and near Petersfield Avenue in the Borough of Slough as land subject to compulsory acquisition by the appropriate local authority, being land which in the opinion of the local planning authority ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the said plan. A certified copy of the proposals, as submitted, has been deposited for public inspection at the County Hall, Aylesbury. A certified copy of the proposals has also been deposited for public inspection at the Town Hall, Slough. The copies or extracts of the proposals so deposited, together with copies or relevant extracts of the plan, are available for inspection, free of charge, by all persons interested, at the places mentioned above between the hours of 9.30 a.m. and 4.30 p.m. on Mondays to Fridays, and 9.30 a.m. to 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 11th February, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the clerk of the Bucks County Council, County Hall, Aylesbury, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Cornwall. The plan, as approved, will be deposited in the County Hall, Truro, for inspection by the public.

RESTRICTIVE PRACTICES COURT

The Lord Chief Justice of Northern Ireland has nominated Mr. Justice McVeigh, a judge of the Supreme Court of Northern Ireland, to be a member of the Restrictive Practices Court set up under the United Kingdom Restrictive Trade Practices Act, 1956.

At The Law Society's Intermediate Examination held on 15th and 16th November, 1956, four candidates gave notice for the whole examination, of whom P. N. Gerrard, M.A. (Oxon), was placed in the first class, and one candidate passed the law portion only. Of 245 candidates for the law portion only, 136 passed, and A. H. Howe was adjudged first class. Candidates for the trust accounts and book-keeping portion only numbered 502, of whom 276 passed.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes :—

DRAFT MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Brecon County Council	Ystradgynlais, Vaynor and Penderyn Rural Districts	—	30th April, 1957
Cornwall County Council	Padstow Urban District; St. Germans Rural District	19th November, 1956	31st March, 1957
East Sussex County Council	Chailey Rural District: further modifications to draft maps and statements of 2nd September, 1953, and 6th July, 1956	12th December, 1956	11th January, 1957
Kent County Council	Area of the council: further modifications to draft maps and statements of 8th January, 1953, 24th November, 1955, and 12th January, 1956	8th November, 1956	18th December, 1956
Lincoln County Council, Parts of Lindsey	Isle of Axholme Rural District: modifications to draft map and statement of 4th December, 1953	21st December, 1956	25th January, 1957
Northumberland County Council	Haltwhistle and Morpeth Rural Districts: further modifications to draft maps and statements of 17th May, 8th December, 1954, and 15th August, 1956	15th November, 1956	23rd December, 1956
Staffordshire County Council	Area of the council: modifications to draft maps and statements of 4th December, 1953, and 10th March, 1954	29th November, 1956	30th January, 1957
West Riding of Yorkshire County Council	Ossett Borough; Cudworth, Darfield, Denby Dale, Dodworth, Featherstone, Hemsworth, Horbury, Hoyland Nether, Normanton, Penistone, Rothwell, Royston, Stanley, Stocksbridge, Worsbrough Urban Districts; Hemsworth, Penistone, Wakefield, Wortley Rural Districts: modifications to draft maps and statements of 28th January and 5th June, 1953	15th November, 1956	21st December, 1956

PROVISIONAL MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Canterbury City Council	City of Canterbury	12th December, 1956	8th January, 1957
Hertfordshire County Council	County Districts of Hertford	16th November, 1956	13th December, 1956

DEFINITIVE MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for applications to the High Court
Lewes County Council	Seaford Urban District; Hailsham Rural District	14th November, 1956	26th December, 1956
West Hartlepool County Borough Council	County Borough of West Hartlepool	18th December, 1956	22nd January, 1957

Wills and Bequests

Mr. Herbert Elliston Allen, retired solicitor, of Parliament Street, S.W.1, left £17,012.

Mr. Clare Fordham Harriss, retired solicitor, of Worthing, left £14,357.

Colonel William Mackenzie Smith, solicitor, of Sheffield, and a former president of The Law Society, left £65,927 (£52,594 net).

Mr. H. A. R. Wood, solicitor, of Harpenden, Herts, left £48,454 net.

OBITUARY

MR. H. C. JONES

Mr. Harold Christian Jones, solicitor, of Liverpool, died recently, aged 90. He was admitted in 1890.

MR. W. A. SPARROW

Mr. William Austin Sparrow, solicitor, of Bath, died on 26th December. He was admitted in 1906.

MR. H. TUFFEE

Mr. Harold Tuffee, solicitor, of Gravesend, died recently, aged 73. He was admitted in 1905.

The Solicitors' Journal, 10th January 1857

ON 10th January, 1857, the SOLICITORS' JOURNAL published a strong leading article on the scandal of the complex proceedings arising from the sensational failure of the Royal British Bank: "The costly litigation . . . has as yet done no service to any of the parties concerned . . . No one can question the justice of throwing the loss occasioned by the frauds of directors upon the members of the company, who, with their eyes open, undertook the risk, rather than upon the depositors who paid their money on the faith of the unlimited liability of every shareholder. But it is a scandal to the administration of justice, that no better means have been provided for securing payment of the debts of an insolvent company than the ruinous scramble, which is likely enough, if it continues, to exhaust every farthing of available assets, without satisfying half of the claims which the bank has to meet. It had been hoped that, whatever might be the results of the litigation to the parties concerned, we should at least have obtained a satisfactory interpretation of the statutes as a guide to future proceedings. But the elaborate judgments that have been delivered have done little to clear up the law and nothing whatever to correct the evils which have resulted from the mode of its administration . . . The difficulty which the legislature has created, neither prohibiting nor regulating concurrent proceedings in Chancery and Bankruptcy still remains and throughout the contest the courts have made no effort to unite in the same hands the powers derived from rival jurisdictions, which cannot be effectively exercised by different and hostile officials."

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